20

APR 9 1943

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 902

PEOPLE OF PUERTO RICO,
Petitioner,

vs.

UNITED STATES OF AMERICA

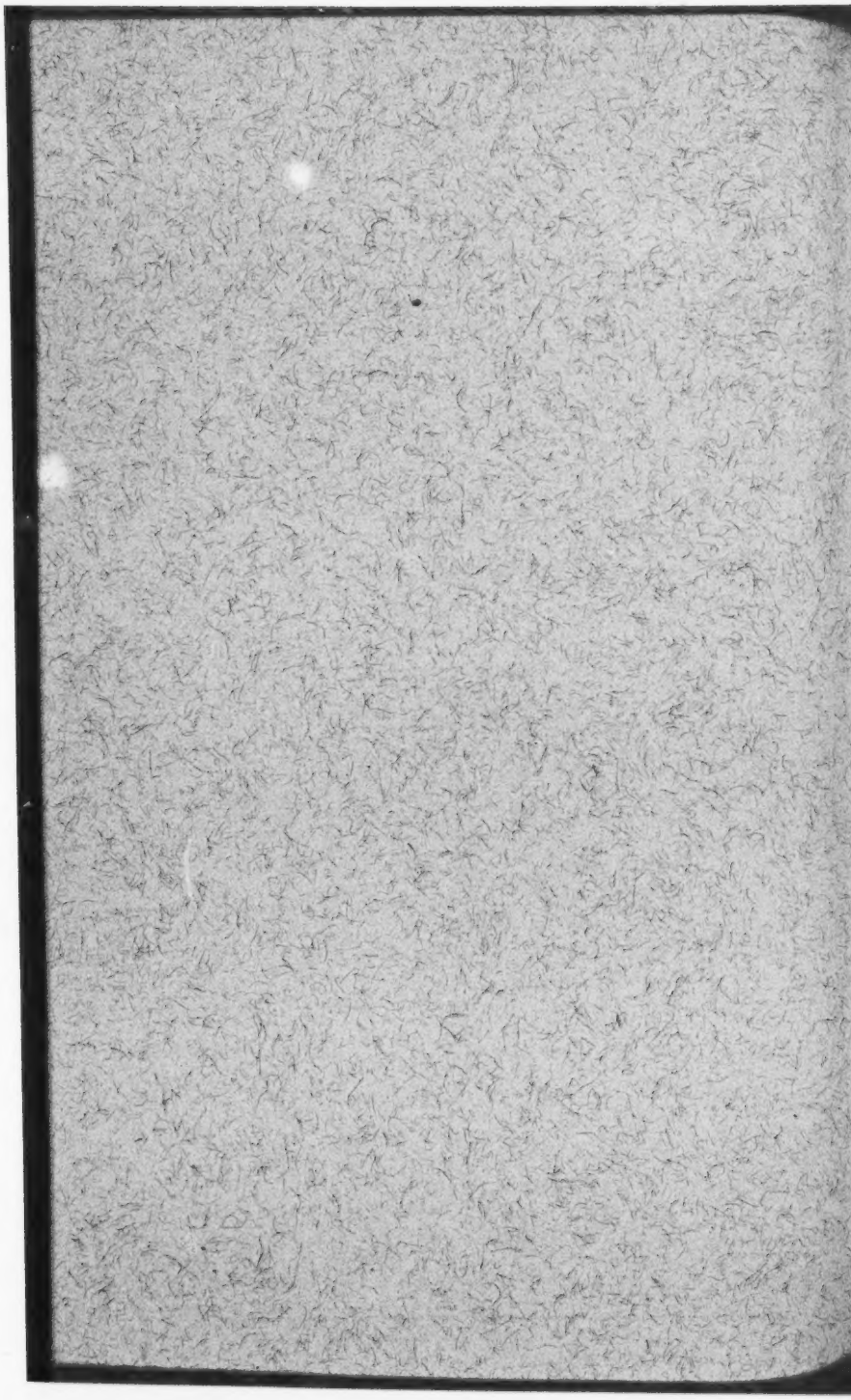
and

CASINO DE PUERTO RICO,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico.
Of Counsel.



SUBJECT-INDEX

	Page
Petition	1-8
Prayer for Writ	1
Petitioner's Position	2-3
Questions Presented	3
Statement of the Case	3-4
Opinion of the Circuit Court of Appeals	5-6
Presiding Judge Magruder's Separate Opinion, Expressing a "Doubt"	7
Reasons for Granting the Writ	7-8
Brief in Support of Petition	9-30
Opinions Below	9
Jurisdiction	9
Questions Presented....9; Petitioner's Position; and Questions Presented	9
Statutes.....9; and Appendix	31-37
Statement.....9, 10-15; and Petition	3-4
Specification of Errors to be Urged.....9; Petitioner's Position, 2-3; Questions Presented, 3; and Reasons for Granting the Writ	7-8
Argument	10-30
Statement	10-15
Points—	
First—On the *first phase* of the case, the question presented is: Were the conditions contained in the *second* and the *third Provisos* in Section 3 of the act, "Joint Resolution No. 27", of April 20, 1936, under which the Casino accepted the land back from the insular government, broken by the United States taking the land in the condemnation proceeding?	15-28
I—Was the condition broken by the United States taking the land?	16
II—The determination of that question is not affected in any way by the fact that the transfer of title from the Casino to the Federal Government for the use of the Army was brought	

Page

about by condemnation proceedings, rather than by voluntary sale. Condemnation is simply one form of transfer of title 16-18

III—The wording of the *Provisos* is emphatic .. 18-19

IV—Therefore, as above stated, the determination of the question is not affected in any way by the fact that the transfer of title from the Casino to the federal government for the use of the Army was brought about by condemnation proceedings, rather than by voluntary sale. Condemnation is simply one form of transfer of the title 19-24

V—But only the grantor, or his heirs, can take the benefit of the reversion, upon such breach of condition. No one else can. The right is not assignable 24-26

VI—It is immaterial that at the time of the enactment of the Joint Resolution in 1936 and the consummation of the transaction under it,—or at the times of the enactments of the earlier Acts of 1910 and 1912, and of the acts done under them—the thought of the taking over of this parcel of land for the Army, by the federal government by condemnation proceedings, may not have actually been actively in the minds of the members of the Legislature 26-27

VII—There is nothing here to indicate any mistake either of law or fact, or any misunderstanding, either on the part of the Legislature in stipulating the conditions set out in the *Provisos* in the Joint Resolution of 1936, or on the part of the Casino in accepting them.

The plain intent of the Legislature was to secure to the Puerto Rican public the use, in perpetuity, in any event, of this "social center and recreation park" 27-28

Second—On the *second phase* of the case the question presented is: Whether, under the *first Proviso* of Section 3 of the "Joint Reso-

Page

lution'' of 1936 the People of Puerto Rico did not, during the time while the Casino was in possession, and before these condemnation proceedings were ever begun,—and independently of any question whatever of reversion under the second and third *Provisos,*—have a then presently existing active possessory interest in the property, in the nature of an active trust for its benefit, capable of being valued like any other presently existing undivided interest in property, and therefore compensable in these condemnation proceedings 28-30

VIII—The primary legislative intent permanently to secure the unrestricted free use of this property for the citizens of Puerto Rico ''as a social center and recreation park annexed thereto'' has already been indicated 29

IX—Wholly regardless of any question of reversion under the first phase of this case, or under the second or third *Provisos* in the legislation, this presently existing undivided active right and interest of The People of Puerto Rico in this property, was taken by the federal government by the condemnation proceedings 29

X—In view of that interest, the District Court should not have accepted the stipulation, signed only by the Casino with the federal government, as to the value of its interest in the property being only $125,000 as the adequate or sufficient basis for determining the value of the land; but should have heard evidence upon this petitioner's ''Answer'' 29-30

XI—It follows that Judge Magruder's ''doubt'', in his separate opinion, should be considered as indicating the correct answer to the question on this second phase of this case 30

Conclusion 30

Appendix: Statutory Provisions 31-37

TABLE OF CASES

Page

Boteler v. Phila. etc. Terminal R. R. Co., 164 Pa. 397 . 20
Chicago etc. R. Co. v Mechanics Institute, 239 Ill. 197 20
Chandler v. Corporation, 125 Mass. 544 6
First Reformed Dutch Church v. Crosswell, 210 App. Div. 296, N. Y. Supp. 132 2,25
In re Pier Old No. 11 East River, 124 App. Div. (N. Y.) 465 20,21
Joint School District No. 1, Town of Greenfield v. Bosch, 219 Wis. 181 6
Lyford v. Laconia 75 N. H. 220 6
Lancaster School District v. Lancaster, 295 Pa. 112 6, 8, 20, 22-24
Mayor etc. of New York v. City of New York, 168 N. Y. 254 20,21
Starck v. Mansfield, 178 Mass. 76 20
United States v. 2,086 Acres of Land, 46 Fed. Supp. 411 . . . . . 6, 24-25
United States v. 1,119.15 Acres of Land, 44 F. Supp. 499 6

STATUTES

FEDERAL

Act of February 13, 1925, amending the Judicial Code 9

PUERTO RICO

Act No. 69, approved September 3, 1910 . . . . 11, 13, 14, 16, ... and Appendix, 31-33
Sec. 2 . . . . . 11, and Appendix, 31-32
Secs. 3, 4, 5, and 6 . . . . . 12, and Appendix, 32
Secs. 7 and 8 . . . . . 11, 12, and Appendix, 32
Sec. 9 . . . . . 11, 12, 18, 27, and Appendix, 33
Act No. 2, approved February 21, 1912 . . . . . 11, 12, 13, 14, 16, ... and Appendix, 33-34
Sec. 1 (amending Secs. 7 and 8 of Act No. 69, above) . . . . . Appendix, 33-34
Sec. 2 . . . . . Appendix, 34

OTHER AUTHORITIES

Nichols on Eminent Domain (2nd Ed.) Vol. 1, Par. 119, pp. 341, 342 20,21
Orgel on Eminent Domain, p. 404 20
1 Am. Law Inst. Restatement of Property, Sec. 53, comment (b) and illustrations thereunder [cited by the court] 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 902

PEOPLE OF PUERTO RICO,
Petitioner,

vs.

UNITED STATES OF AMERICA
and
CASINO DE PUERTO RICO,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit entered in this case on December 18, 1942,—rehearing denied January 11, 1943,—affirming the judgment of the District Court of the United States for Puerto Rico, which had denied the claim of this petitioner, The People of Puerto Rico, for compensation for the land taken by the federal government in this condemnation proceeding, and had awarded the entire compensation to the other respondent here, the Casino de Puerto Rico, and had accepted a stipulation between that respondent and the federal government as a sufficient basis for fixing the valuation of the land, despite the claim of this petitioner that such valuation was too low.

Petitioner's Position

It is the position of the petitioner, The People of Puerto Rico, that:

1.—The declaration of taking of this land by the federal government and the judgment of condemnation, December 4, 1941, *eo instanti* operated as a breach of the condition upon which the Casino had been holding the land under the following *provisos* contained in the Puerto Rico statute[1] under which the Casino had been in possession of the land prior to the taking, *viz.:*

> "*Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for non-profit purposes, as a social center and recreation park annexed thereto; *Provided, further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other purposes different from those specified in the preceding *proviso,* such act or acts shall determine the gratuitous reversion of said lot, as well as of all improvements and works constructed thereon, to The People of Puerto Rico; *Provided, also,* That the Commissioner of the Interior of Puerto Rico is authorized to accept the above-mentioned conditions in the corresponding deed".

On this phase of the case the position of The People of Puerto Rico is based on the *second* and the *third provisos* in the statute, as above quoted.

2. In any event, prior to the taking in condemnation and while the Casino was in possession, The People of Puerto Rico retained and possessed a presently existing active possessory interest in the land, capable of valuation, under the *first proviso* in the statute, as above quoted, *viz.:*

---

[1] Act, "Joint Resolution", No. 27, approved April 20, 1936, Laws of Puerto Rico, 1936, pp. 1194, 1198; Appendix, infra, pp. 34-37; Sec. 3, pp. 36-37.

"That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico *shall be used only for non-profit purposes, as a social center and recreation park annexed thereto*". (*Italics supplied*)

Questions Presented

Manifestly, *the two questions presented* are those above indicated in the heading "Petitioner's Position", both branches of which were overruled by the Circuit Court of Appeals, affirming the order of the District Court,—erroneously as petitioner believes.

The questions are:

1.—Did not the declaration of taking of this land by the federal government and the judgment of condemnation *eo instanti* operate as a breach of the conditions of the *second* and *third Provisos* upon which the Casino had been holding the land, and thereby work a reverter of the title to The People of Puerto Rico?

2.—In any event, prior to the taking in condemnation and while the Casino was still in possession of the land, was not the right of The People of Puerto Rico, under the *first Proviso,* that the lot "*shall be used only for non-profit purposes, as a social center and recreation park annexed thereto*", a then presently existing active possessory undivided interest in the land, capable of valuation like any other undivided interest, and compensable in condemnation proceedings?

Statement of the Case

The essential facts are succinctly stated in the opinion of the Circuit Court of Appeals (R. 46-48; 132 F. (2d) [Advance Sheets] 220, at pp. 220-221) as follows:

"On December 4, 1941, the United States Government filed a petition in the court below for condemnation of the land in question, with the buildings thereon, for the purpose of adequately providing 'for recrea-

tional facilities to maintain the morale of the armed forces of the United States and of persons employed in national defense industries.' At the time the declaration of taking was filed the acquiring authority estimated that $125,000 was just compensation for the property and deposited that sum in the registry of the district court 'for the use of the persons entitled thereto'. The defendant, Casino de Puerto Rico, a local corporation, subsequently stipulated with the United States Government that the above sum represents 'the true and fair market value' of the property and agreed to accept that amount 'as full compensation and in full satisfaction of any and all claims of whatever nature against the United States of America by reason of the taking of the premises herein condemned'. In the judgment appealed from, the court below awarded the above sum of money to the defendant, Casino de Puerto Rico, and decreed that the other defendant, The People of Puerto Rico 'have no compensable property interest in the premises' condemned. Thereupon the latter took this appeal * * *.

"The land condemned was originally part of a larger tract which formed part of the public domain of the Spanish Crown. As such it was ceded to the United States by the Treaty of Paris. Subsequently the United States conveyed the land to The People of Puerto Rico and the latter in turn conveyed it to the corporation Casino de Puerto Rico. From 1913 to 1936 the Casino held fee simple title to the entire tract, but in the latter year, to liquidate a mortgage which it had given to a local bank and to liquidate a debt of the local bank to The People of Puerto Rico, the bank being in financial difficulties, the Casino sold and conveyed part of its land to The People of Puerto Rico. The part thus sold is not involved in the present proceedings, but Joint Resolution No. 27, approved April 20, 1936, (Laws of Puerto Rico, (1936) 1194-1198) by which the sale of this part was authorized, provided: [*Here the court quotes the provisos in the statute which we have already quoted above, on page 2, ante*]."

Opinion of the Circuit Court of Appeals

The Circuit Court of Appeals, in affirming the order or judgment of the District Court,[2] says (Opinion, R. 48-49):

> "It seems to us obvious that the persons entitled to compensation are those who, at the time of condemnation, have an interest in the land taken which the taking damages or destroys. Clearly the Casino was such a person. There is no evidence that it had been dissolved or that its activities had in any way ceased, nor is there any evidence that it had used the property for anything but non-profit purposes. Neither is there any evidence that it was about to be dissolved or cease its activities or about to make any use of the premises not authorized by the Joint Resolution quoted above. In short, it has never done anything, and there is no evidence that it ever proposed to do anything, in breach of any of the conditions upon which it held the property. Thus up to the time when this condemnation proceeding was brought it had the right to occupy the premises indefinitely within the limits imposed, and this right was cut abruptly off by condemnation.
>
> "The fact that the Casino had only the right to use the property for non-profit purposes does not affect the existence of its interest but only the value thereof, and the question of the value of the Casino's interest is not before us. That value, as already pointed out, was agreed upon in a stipulation entered into between the Casino and the United States.[3]
>
> "The sole question before us is whether or not The People of Puerto Rico, at the time of the taking, also had a compensable interest in the property, which interest the taking damaged or destroyed. Undoubtedly

---

[2] The District Court's opinion is on pp. 23-26 of the Transcript of the Record. Its "Decision and Judgment", January 17, 1942, are on pp. 26-29 of the Record.

[3] This ignores the *second phase of* "Petitioner's Position" as above stated (*ante*, pp. 2-3), which is the *second question* under the "Questions Presented" here (*ante*, p. 3), —the question which inspired the "doubt" on the part of PRESIDING JUDGE MAGRUDER (R. 50; 132 F. (2d) at p. 222, quoted, *infra*, p. 7).

> The People of Puerto Rico had an interest in the land in question at the time of its condemnation. Whether that interest was a right of reentry for condition broken, or a possibility of reverter, or something else, we need not inquire, because, whatever its technical name, *the only right*[3] which The People had up to the time when the land was condemned was the right to the land in fee simple if at some indefinite time in the future the Casino should violate any one of the conditions or *provisos* upon which its right of present occupancy was made to depend.[3] And this right of The People of Puerto Rico was destroyed by the condemnation. But, the question remains: What was the value of that right? (*Italics supplied*)

The court continues: "We are aware of no rational means by which to determine the value of the possibility that at some indefinite time in the future the land might revert to The People of Puerto Rico". It says that all that can be done "is to venture a guess", and that "it is elementary law that damages cannot be assessed by mere guesswork", citing authorities[4] which it says "are all in accord and are all squarely in point".

The court concludes (R. 49-50; 132 F. (2d) at p. 222):

> "* * * *If Lancaster School District* v. *Lancaster,* 295 Pa. 112, (see 29 Columbia Law Review 674), relied upon by the appellant, holds to the contrary,[5] we decline to follow it."

---

[4] The court cites *Lyford* v. *Laconia,* 75 N. H. 220, 226, and *Chandler* v. *Corporation,* 125 Mass. 544, 547; and says "See also" *First Reformed Church* v. *Croswell,* 110 App. Div. [N. Y.] 294; *Joint School District No. 1, Town of Greenfield* v. *Bosch,* 219 Wis. 181; *United States* v. *1119.15 Acres of Land,* 44 F. Supp. 449; *United States* v. *2,086 Acres of Land,* 46 F. Supp. 411; and also 1 Am. Law Inst. Restatement of Property, Sec. 53, comment (b) and illustrations thereunder.

But see *contra,* and **the distinction,** Supporting Brief, *infra,* Point V, pp. 24-26.

[5] See our Supporting Brief, pp. 20, 22-24.

Presiding Judge Magruder's Separate Opinion, Expressing a "Doubt"

PRESIDING JUDGE MAGRUDER filed the following separate opinion (R. 50; 132 F. (2d) at p. 222), expressing a "doubt" with reference to the *second phase* of Petitioner's Position"[6]:

> "MAGRUDER, J. It seems clear to me that appellant is not entitled to the whole of the compensation paid, as contended. I agree, also, that on the authorities cited, appellant had no compensable interest, if all it had, just before the taking, was a future interest in the nature of a possibility of reverter upon the condition described. *My doubt is whether The People of Puerto Rico did not have something more than this.* The Casino was required to hold the parcel to the use and enjoyment of the public 'as a social center and recreation park.' Did this not give The People, as a body politic, some kind of a present interest in the property? I would not know how such an interest should be valued; certainly it must be something less than the value of an unencumbered fee. While expressing this doubt, I do not dissent." (*Italics supplied*)

Reasons for Granting the Writ

The decision of the Circuit Court of Appeals is believed to be clearly wrong on both of the questions in the case[7], both in denying petitioner's right to reversion of the land (the *first phase* of petitioner's position here); and also in denying compensation for the loss of petitioner's present active possessory interest in the land, which existed while it was held by the Casino (the *second phase* of petitioner's position here). The latter is the question with relation to which PRESIDING JUDGE MAGRUDER expressed his "doubt".

---

[6] [*Ante*, pp. 2-3]. Petitioner was the appellant in the Circuit Court of Appeals.

[7] See "Petitioner's Position", and "Questions Presented", *ante*, pp. 2-3. And see also Supporting Brief, *infra*, pp. 15-30.

Both phases of the case present important questions of federal law which have not been, but should be, settled by this Court.

The decision of the Circuit Court of Appeals indicates, with reference to the first question of "reversion", a conflict among the decisions of State courts and the lower federal courts; and expressly declines to follow the decision of the Pennsylvania Supreme Court.[8]

And ~~that court~~ the circuit court of appeals, as is pointed out in our Supporting Brief (*infra*, Point V, pp. 24-26), overlooked the important distinction noted in some of those cases between the situations there presented, where the grantors had retained no active present interest in the property, and were not asking for enforcement of the reversion, and the situation in the present case where an active present interest was retained and the grantor is here asking for enforcement of the reversion for the benefit of the public, the people of Puerto Rico.

It is, therefore, respectfully and earnestly requested by the insular government, The People of Puerto Rico, that this petition for a writ of certiorari be granted.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico.
Of Counsel.

---

[8] *Lancaster School District* v. *Lancaster, supra,* 295 Pa. 112, which petitioner believes states the correct rule (Supporting Brief, *infra,* pp. 20, 22-24).

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the District Court of the United States for Puerto Rico (R. 23-26) is not officially reported. The opinion of the Circuit Court of Appeals, December 18, 1942, together with the separate opinion of PRESIDING JUDGE MAGRUDER, expressing a "doubt" on the *second phase* of the case (R. 46-50), appears in 132 F. (2d) 220-222 (*Advance Sheets*). The Order of the Circuit Court of Appeals, January 11, 1943, denying a rehearing (R. 51) has not yet appeared in the Federal Reporter.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on December 18, 1942 (R. 50); and that Court entered its Order denying this petitioner's petition for rehearing on January 11, 1943 (R. 51).

Questions Presented

The questions presented are stated in the Petition ("Petitioner's Position" and "Questions Presented", *ante*, pp. 2-3).

Statutes Involved

The statutes primarily involved are in the Appendix, *infra*, pp. 31-37.

Statement

A statement of the case is in the Petition (*ante*, pp. 3-4), and a fuller statement is made hereafter (*infra*, pp. 10-15).

Specification of Errors To Be Urged

These are indicated under the headings "Petitioner's Position", "Questions Presented", and "Reasons for Granting the Writ" (*ante*, pp. 2-3 and pp. 7-8).

ARGUMENT

Statement

The summary statement of the case, made by the Circuit Court of Appeals, is in the petition (*ante,* pp. 3-4). Essentially the controversy is not between the insular government of Puerto Rico and the federal government, but between the insular government, this petitioner, The People of Puerto Rico, on the one hand, and the other respondent, the Casino de Puerto Rico, a private corporation, on the other hand.

Stating the facts a little more fully than was done by the Circuit Court of Appeals, the case originated as a condemnation proceeding by the United States Government in the federal District Court for Puerto Rico, to take over a parcel of land for Army purposes, "for recreation facilities to maintain the morale of the armed forces of the United States and of persons employed in national defense industries." (*Petition for Condemnation,* Par. 3; R. 2). The federal government deposited $125,000 to pay for the land.[9] The question is whether this deposit is sufficient to cover the value of the land, or is to be increased, and also whether it is to be paid to The People of Puerto Rico as the owner of the land, or to the Casino, or is to be divided between them. The District Court held that it should go to the Casino. (*Opinion,* R. 23-26; *"Decision and Judgment",* R. 26-29), and therefore that its stipulation accepting the $125,000 valuation was sufficient proof of value. The People of Puerto Rico believe it should go to them, or should be divided; and that the amount is too low; and accordingly appealed, and now bring this petition.

The questions turn on the construction of Joint Resolution No. 27 of the Legislature of Puerto Rico, approved April 20, 1936, particularly Section 3, including its three

---

[9] "Judgment", R. 11, 12. Motions for Judgment, etc., R. 13-14, 15-16. Stipulation between the federal government and the Casino de Puerto Rico, R. 17-19. Order for Delivery of Money, R. 20. Answer of People of Puerto Rico, R. 21-22. Opinion of the District Court, R. 23.

closing *Provisos,* taken in connection with the facts recited in the Preambles (Laws of Puerto Rico, 1936, pp. 1194-1198; Appendix, *infra,* pp. 34-37), together with the earlier Acts No. 69 of September 3, 1910, and No. 2 of February 21, 1912 (Laws of Puerto Rico, Extra Session, 1910, pp. 42-45; Laws of 1912, pp. 38-39; Appendix, *infra,* pp. 31-34), viewed in the light of the facts appearing in the record with relation to the history of the title, and the characteristics of the property with which the Legislature was dealing, forming the background of the legislation.

The *Provisos* are set out in the Petition (ante, p. 2).

As to the earlier history Judge Cooper finds (*Opinion,* (R. 23):

> "The land condemned originally formed a part of the public domain of the Spanish Crown and by the Treaty of Paris it was ceded to the United States. Subsequently the United States conveyed the said land to The People of Puerto Rico."

In 1913 The People of Puerto Rico granted, as a gift,[10] to the Casino de Puerto Rico a tract of land, including the parcel here in question,

> "for the purpose of cooperating in the construction and maintenance in the city of San Juan of a casino which may fill social needs and promote general culture."[11]

That grant was originally directed by Sections 7, 8, and 9 of Act No. 69 of September 3, 1910 (Appendix, *infra,* pp. 31-33), an act whose general purposes were to provide aid for the construction of buildings and institutions considered of special public value to the community. Section 2 directed a grant of land to the Young Men's Christian Asso-

---

[10] The deed expressed a nominal consideration of $1.00.

[11] Section 7, Act No. 69 of September 3, 1910; Laws of Puerto Rico, 1910, pp. 44-45; Appendix, *infra,* p. 32.

ciation for a Y. M. C. A. building;[12] and Sections 3, 4, 5, and 6[13] provided aid in the construction of an adequate hotel then much needed for the community,

> "which will be capable of suitably accommodating the needs and requirements of the tourist, commercial, transient and resident patronage" (Sec. 3).

Sections 7 and 8 of the Act of 1910 were amended by the Act of February 21, 1912 (Appendix, *infra*, pp. 33-34) so as (a) to require the Casino's building to cost not less than $60,000; (b) to allow a period of three years for its construction, instead of the year and a half originally allowed; and (c) to add the following further term to the *proviso* in Section 8:

> "*Provided*, That * * *, and that said building shall be maintained for the purposes of the association for a period of at least ten (10) years, and should this not be the case, the title of ownership of such land shall revert to The People of Puerto Rico." (Sec. 8; Appendix, *infra*, p. 34).

Section 9 of the original Act of 1910, never amended in this respect, and still in force, provides:

> "Section 9.—The terms, conditions and obligations of this Act shall apply to any purchaser or successor of such grantee, *whether by voluntary act or by judicial procedure.*" (*Italics supplied.* Appendix, *infra*, p. 33).

The building was constructed accordingly, and the Casino became one of the public institutions of the capital city of San Juan.

By 1936 the Casino had, however, become involved in financial difficulties, due primarily to the general depression of the times. It had mortgaged its properties to the Banco Territorial y Agrícola for $40,000, and was unable to pay

---

[12] Appendix, *infra*, pp. 31-32.
[13] Appendix, *infra*, p. 32.

out; only $4,000 had been paid on the past due mortgage, leaving a balance of $36,000 due. And the bank itself was in difficulties, and had pledged the Casino's mortgage notes, with other securities, to the Treasurer of Puerto Rico as collateral security upon the bank's own indebtedness to the Treasury.

It was of public interest to The People of Puerto Rico to keep the Casino's activities going, particularly the social center and the recreation park maintained on the portion of the property here in question. Under those circumstances, to help the Casino out, and to keep its activities going for the public benefit, a three-cornered deal was arranged, and was approved by the Legislature by Joint Resolution No. 27, *supra*, April 20, 1936, by which (1) the bank surrendered the Casino's $36,000 mortgage note outright to the Treasury, and received credit for its face value; and then (2) the Treasury turned around and bought one building, "the bowling alley building", from the Casino for this same sum of $36,000, the par value of the Casino's mortgage note thus held by the Treasury, and paid the purchase price by the cancellation of the note, so as to release the Casino from the indebtedness, and to put it on its feet financially. And The People of Puerto Rico, as a condition to thus disbursing that $36,000 out of its public Treasury to buy that bowling alley property, stipulated as a *third term* in the transaction that (3) in order to secure to The People in perpetuity the enjoyment of the "non-profit" portion of the properties, originally donoted to the Casino for those purposes by the Acts of 1910 and 1912, *supra*, the "social center and recreation park annexed thereto"[14] located on the portion of the property now involved in this condemnation proceeding, there should be included the emphatic stipulations appear-

[14] To secure the construction and maintenance of which in the first instance had been a cardinal inducement to the original donation of the land to the Casino by the Acts of September 3, 1910, and February 21, 1912 (Appendix, *infra*, pp. 31-34).

ing in the above quoted *Provisos* to Section 3 of the Joint Resolution (Appendix, *infra*, pp. 36-37).

The securing of such perpetual use of that property for the public therefore appears to have been a major part of the consideration for which The People of Puerto Rico paid the $36,000 out of their public funds, to acquire both (a) the bowling alley building, and (b) ***this perpetual use*** of this "non-profit" "social center and recreation park" for the citizens of Puerto Rico.

There is nothing in the Joint Resolution, or in its Preambles,[15] or in any other legislation, or elsewhere in this record, to indicate that the bowling alley building, simply taken by itself, would have been considered especially attractive or necessary as a purchase for office building purposes for The People of Puerto Rico, or for the expenditure of public funds, in 1936, during the depression times. It was the concomitant securing of the use of the "non-profit" portion of the property for the public, in perpetuity, that made the transaction attractive to the government. That thought was crystalized in the Preambles, and in the provisions of the Joint Resolution, particularly the *Provisos* in Section 3, *supra*.

The Casino, in reality, never had any valuable financial property interest in this particular parcel of this property, after accepting it back under this 1936 legislation; no interest from which it could ever derive any financial profit. It had received it originally as a part of a donation from The People under the Acts of 1910 and 1912 subject to the condition that it should be used for "social needs and promote general culture"; and in the transaction of 1936, when The People of Puerto Rico had to come to its financial rescue, the Casino had accepted further control of this particular parcel of land on specific conditions which, as expressed in

---

[15] Although the long 4th Preamble contains a concluding recital that "the Insular Government would acquire a building which would be of great use to it." (Appendix, *infra*, p. 35).

the *Provisos* in the Joint Resolution, bound it forever to use this parcel "*only for non-profit purposes,* as a social center and recreation park annexed thereto" (*Italics supplied*). In other words, the Casino never had any interest in the property of any financial,—or profit,—value whatever. **Its interest,—whatever the technical form of the title may be considered to have been,—was rather simply in the nature of a lease or license to use the property only for this non-profit purpose,**—a license automatically terminable, by its express terms, whenever from any cause whatsoever it should happen that either (1) "the Casino de Puerto Rico is dissolved", or (2) "its activities cease *in any way*"[16] (*Italics supplied*), or (3) "the said lot is used for other purposes different from those specified in the preceding provisos" [Second *proviso*, Sec. 3, Joint Resolution, Appendix, *infra*, pp. 36-37].

POINTS

First

On the *first phase* of the case, the question presented is, as indicated in the petition ("Questions Presented", *ante*, p. 3):

Were the conditions contained in the *second* and the *third Provisos* in Section 3 of the act, "Joint Resolution No. 27", of April 20, 1936,[17] under which the Casino accepted the land back from the insular government, broken by the United States taking the land in the condemnation proceeding?

And, if so, then did not the land *eo instanti* revert to, and become the property of, The People of Puerto Rico, and the deposited money which was substituted for the land by the

---

[16] That is to say, "in any way" *on this property*, with which the Legislature was specifically dealing, and the use of which it was the specific legislative intent to secure in perpetuity to The People of Puerto Rico for this "non-profit" purpose of "a social center and recreation park" for the general use of the public.

[17] *Ante*, Petition, p. 2; Appendix, *infra*, pp. 36-37.

condemnation proceeding therefore belong to The People of Puerto Rico?

Upon this first phase of the case the following points I to VII, inclusive, are submitted.

I

Was the condition broken by the United States taking the land?

(1)—If so, then, *eo instanti,* the land became the property of The People of Puerto Rico; and, hence,

(2)—The deposited money, substituted for the land, belongs to The People of Puerto Rico.

(3)—*The question is of the meaning and operation of the contract between the parties,* embodied in Joint Resolution No. 27 of 1936, with its *Provisos* in Section 3, in the light of the Preambles and the balance of the Act, and of the earlier Acts of 1910 and 1912, together with the legislative history of the title, and the physical characteristics of the property and its location and the purposes to which it had been devoted, all of which are to be considered in construing the language of the *Provisos.*

II

The determination of that question is not affected in any way by the fact that the transfer of title from the Casino to the Federal Government for the use of the Army was brought about by condemnation proceedings, rather than by voluntary sale. Condemnation is simply one form of transfer of title.

A.—The fact that the transfer was in the form of a taking by the federal government, in condemnation proceedings in eminent domain, does not affect this question.

B.—Such a taking is merely one form of transfer.

C.—No suggestion is found anywhere in the authorities,—either in text books or decisions,—that such a taking differs, in itself, from any other form of transfer, in its effect upon the preexisting contractual rights of the parties.

(1) If it did so differ in this respect, or if it did in itself change the pre-existing contractual rights of the parties *inter sese*, or operate differently in this respect from a voluntary transfer, then the very fact of such different operation or of changing the pre-existing mutual rights of the parties among themselves would, in itself, constitute a "taking" of property in the constitutional sense, and would require compensation to any party whose rights were thus adversely affected.

D.—The situation here is therefore the same as though the transfer had been by voluntary sale, instead of by condemnation,—as though the Casino and the United States had agreed upon a price, and made a voluntary sale and purchase.

E.—**The Casino could not change the situation,**—nor affect the rights of The People of Puerto Rico in any way,—**by simply refusing to agree with the United States on a price for a voluntary sale,** and thereby forcing the United States to condemn.

F.—The ultimate question here is, therefore:

What would have been the effect of a voluntary sale by the Casino to the United States, for the same purposes for which the land was taken in condemnation,

> "adequately to provide for recreational facilities to maintain the morale of the armed forces of the United States and of persons employed in national defense industries"?

(1)—Would that have been a breach of the conditions in the *Provisos?*

(2)—Would it have worked a reverter to The People of Puerto Rico?

(3)—The usual rules of interpretation of contracts and statutes are to be applied.

G.—Thus interpreting the Joint Resolution with its Preambles and *Provisos,* several elements seem plain:

(1)—**The underlying legislative intent was to secure to The People of Puerto Rico, in perpetuity, the use of this parcel of ground, "as a social center and recreation park"; and also,**

(2)—So far as the Casino was concerned, that it should be bound so to hold it, in perpetuity, without ever making any financial profit from it, or utilizing it in any way for purposes of financial gain,—"shall be used only for non-profit purposes".

(3)—That by the express terms of Section 9 of the earlier Act of September 3, 1910,[18] under which The People made the original donation to the Casino, still in force, and in the light of which, among other things, the *Provisos* in the Joint Resolution of 1936 are to be read, it was provided that,

> "Section 9.—The terms, conditions and obligations of this Act shall apply to any purchaser or successor of such grantee, *whether by voluntary act or by judicial procedure.*" (*Italics supplied*)

III

The wording of the *Provisos* is emphatic

It is made "a condition of this transaction", not only, on the one side of the medal, that this parcel of ground, "the remainder of the lot which was ceded to the Casino de Puerto Rico",

> "shall be used only for non-profit purposes, as a social center and recreation park",

but also, emphatically, on the other side of the medal,

> "That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other purposes different from those specified in the preceding proviso, such act or acts shall determine the gratuitous reversion of said lot, as well as

[18] Appendix, *infra*, p. 33.

> of all improvements and works constructed thereon, to The People of Puerto Rico."

In view of this emphatic language, and in view of all the circumstances, it is believed plain that the transfer to the United States, for the Army, worked a breach of the condition, and hence a reverter to The People of Puerto Rico.

A.—To use the property for the Army,

> "for recreational facilities to maintain the morale of the armed forces of the United States and of persons employed in national defense industries" (R. 2),

is not the same thing as to use it for the inhabitants of Puerto Rico,—the people of the Island,—for which the Legislature had reserved it in perpetuity.

B.—It is not sufficient that a court may think,—as the District Court says, as above quoted (R. 25), that:

> "The People of Puerto Rico * * * will, now that this is to become a recreation center for the Army of the United States, receive probably a greater benefit by reason of its own citizens forming a part of that army."

C.—*That is not the same thing* for which the Legislature directed this land reserved in perpetuity.

D.—It is for the Legislature, and not for the courts, to say whether or not it is satisfactory to The People of Puerto Rico to use this land for this changed purpose, primarily for the benefit of the Army, instead of for the general public of the Island.

IV

Therefore, as above stated, the determination of the question is not affected in any way by the fact that the transfer of title from the Casino to the federal government for the use of the Army was brought about by condemnation pro-

ceedings, rather than by voluntary sale. Condemnation is simply one form of transfer of the title.[19]

Mayor etc. of New York vs. *City of New York,* 168 N. Y. 254; 61 N.E. 249. *In re Pier Old No. 11 East River,* 124 App. Div. (N. Y.) 465, 109 N. Y. Supp. 2, 3, 9-10; *affirmed, same case,* 102 N. Y. 539, 84 N.E. 1123. *Lancaster School District* v. *Lancaster County,* 295 Pa. 112, 144 Atl. 901, 903-904.

See also, applying the rule so as to work out different,—and apparently contradictory,—results in different cases, but illustrating the rule that the result is to be determined in accordance with the effect of the pre-existing contractual relation between the parties, whatever they may be, and that the operation of the contracts, deeds, or other instruments, is not changed by the mere fact that the transfer of the property is effected by condemnation proceedings rather than by voluntary deed: *Boteler* vs. *Phila. etc. Terminal R.R. Co.,* 164 Pa. 397, 30 Atl. 303; *Starck* v. *Mansfield,* 178 Mass. 76, 59 N.E. 643; *Chicago etc. R. Co.* v *Mechanics Institute,* 239 Ill. 197, 87 N.E. 933 (holding that: "A jury may, however, when the lease has many years to run, consider the reversion of no value").

Confer also *Nichols on Eminent Domain* (2nd Ed.), Vol. 1, Par. 119, pp. 341, 342; *Orgel on Eminent Domain,* p. 404.

It is true that, as Orgel notes (p. 404), in some of the cases the courts show a disposition to dodge the question and to hide behind the technical old conveyancing rules as to "condition subsequent", or "determinable fee", resulting sometimes in apparent injustice. But, particularly in the more recent cases in various State courts, the question has been squarely met, and the decision made in accordance

---

[19] But if the grantor or his heirs do not themselves ask that the reversion be given effect, no one else can do so. Their right is personal, and not assignable. This **distinction** is marked in some of the cases cited by the Circuit Court of Appeals, but was apparently overlooked by that court. *Confer, infra,* Point V, pp. 24-26.

with the terms of the pre-existing contractual relation between the parties,—whether set out in leases, deeds, contracts, or otherwise. If, in accordance with such pre-existing contractual relations, in whatever form, a transfer of the title or of the possession or use of the property,—whether effected by voluntary deed, or by condemnation proceedings, —operated *eo instanti* to end the right of possession, then in such cases effect has been given to that relationship, and the compensation directed paid over to the party who had thus become entitled to it as the owner of the land, after having given effect to that pre-existing relationship.

Thus, for example, as to lessees, Nichols says, in his work on Eminent Domain (Vol. I,—2nd Ed., *supra,*—p. 341),

> "It has become customary in drawing leases of valuable city property to insert a provision that upon the taking by eminent domain of a whole or a part of the premises leased, the term shall come to an end, and under such a lease the tenant has no estate or interest in the property remaining after the taking to sustain a claim for compensation."

A.—And so, with reference to a lease of a pier, the Appellate Division of the New York Supreme Court said (*In Re* Pier Old No. 11, East River, *supra,* 124 App. Div. 465; 109 N. Y. Supp. 2, 9-10):

> "Having due regard to the modification of their rights effected by the granting of a license or permit, different from the one contemplated, and which in legal effect became null and void upon the institution of condemnation proceedings, I am of opinion that the case should be deemed controlled by *Matter of Mayor, etc., of New York,* 168 N. Y. 254, 61 N. E. 249, where the lease contained a clause to the effect that it should cease and terminate in case the premises should be destroyed, or substantially changed by direction and authority of the department of docks or any other party having control of the wharves, piers, and waters of the city, and it was held that the lease was terminated by the condemnation proceedings, and that the tenant was

entitled to no award. The provision in that lease, as has been seen, was not express that it should terminate by the institution of a proceeding to take the land *in invitum*, and the court did not so hold. It held, however, that the tenant leased the property subject to its being taken for public purposes, which was contemplated by the parties, and that in legal effect, although the term was for a specified number of years, it was to cease and terminate whenever the city instituted proceedings to acquire the property."

B.—And so also, in the case of *Lancaster School District v. Lancaster County*, decided by the Supreme Court of Pennsylvania on January 7, 1929 (295 Pa. 112; 144 Atl. 901), the court said (144 Atl. at pp. 902-903, 903-904):

"FRAZER, J. Determination of this appeal involves legal disposition of $42,833, which the government of the United States paid for real estate within the city of Lancaster as a site for a post office building. The federal government instituted proceeding in 1916 in the District Court of the United States for the Eastern District of Pennsylvania to condemn the land; viewers appointed valued the property at $42,833, adjudged the title to be vested in the county of Lancaster, and upon entry of a decree by the court that sum was paid the commissioners of the county, who thereupon executed and delivered a deed to the government for the property. In 1926 the school district of Lancaster City, claiming to have had legal title to the land in question previous to and at the time of condemnation proceedings, instituted suit to recover the valuation fixed by the viewers. At the trial, both parties presented points for binding instructions, which the court reserved, and directed a verdict for defendant. Subsequently the court in banc, in a written opinion, refused to either enter judgment n. o. v. for plaintiff or grant a new trial. The school district appeals from that judgment. * * * [After reciting the early history of the title, prior to 1835]. * * *

"With the building erected, the new school district functioned, and nothing more was done with respect to acquiring title to the land in question until by the

Act of April 15, 1835, P. L. 289, the commissioners of Lancaster county were authorized to purchase the land from Kirkpatrick for the sum of $1,000, '*and to take a conveyance for the same and hold the same for the use of the directors of the first section of the second school district in the city of Lancaster aforesaid, so long as the building erected on said lot of ground shall be used by the said directors for the purposes of education, and when the same shall cease to be so used, the said lot of ground and buildings thereon erected, shall be vested in the commissioners of the county of Lancaster, for the use of said county.*' * * * (*Italics supplied*)

"Was the school district invested with a legal title to the land by the provisions of this instrument? The learned court below answers that question adversely, and our examination of the deed confirms that conclusion. It constitutes a grant of the land and buildings to the county commissioners and their successors in office, and passes the fee to the county, with merely a conditional estate in the school district. The county is to take and hold the land 'for the use of the directors, * * * so long as the building erected on said lot of ground shall be used by the said directors for the purposes of education.' Certainly, if the deed went no further than that, no condition would be raised. It would be a mere recital that the use was made for a particular purpose, consequently we concur in the observation of the court below that, while there was a definite and fixed time for the use, had there followed no agreement as to the disposal of the property after that time, the fee could be considered as vested in the school board and subject to its disposal, following *Sapper v. Mathers,* 286 Pa. 364, at page 366, 133 A. 565 (47 A.L.R. 1172), where we said: 'We have repeatedly held that a deed's limitation of the use to which the land conveyed might be put did not, without more, create a conditional fee or cause a forfeiture if put to another use,' and a grant declared to be for a special purpose, without other words, cannot be held to be a condition; to make the estate conditional the instrument must clearly show such intent. *First Methodist Episcopal Church of Columbia v. Old Columbia Public Ground Co.,* 103 Pa., 608, 614; *Cook v. Trimble,* 9 Watts, 15.

"[3, 4] We are met with no such difficulty in the

case before us. *Here in so many words there are both a plain and direct limitation of the fee and a forfeiture or termination of the estate in case the premises cease to be used for the purposes of education,* 'and when the same shall cease to be so used, the said lot of ground and buildings thereon erected shall be vested in the commissioners of the county of Lancaster, for the use of the said county.' These words create a conditional estate, depending, not upon the use of the ground for educational purposes, but upon the use of the building thereon for such purposes. The use ceased, the limitation was reached, when the federal government in 1917 took over the property for its own purposes. The condition of reverter in the deed is definite, and the words connect the condition with the grant, qualifying and restraining the use of the premises for a definite time and a sole purpose. *Cook* v. *Trimble, supra.* It follows, then, that the present school district of the city of Lancaster, as the legal successor of the original board, was vested with the same contingent right in the property, and cannot claim a more extended estate than that possessed by its predecessor. At the time the conditional estate was dissolved by the cessation of the use of the building for school purposes, the county took the property in fee, and consequently became entitled to the purchase money paid by the United States." (*Italics supplied.*)

V

But only the grantor, or his heirs, can take the benefit of the reversion, upon such breach of condition.

No one else can. The right is not assignable.

A. Thus, in one of the cases cited in the opinion of the Circuit Court of Appeals (R. 49), it was said (*United States* v. *2,086 acres of land,* 46 Fed. Supp. 411, 412, 413):

"* * *. The heirs at law of the grantor have made no claim to the condemnation award or any part thereof in response to an order of this Court requiring them to assert any claim that they may have thereto. (*At p. 412*) * * *.

"* * *. Where an estate has been granted upon a

> condition subsequent, no one but the grantor or his heirs can take advantage of the breach of such condition. The deed is not void on breach of the condition, but becomes so only when the grantor or his heirs enter; or, if actual entry is impossible, by the grantor or his heirs setting up claim to the property. * * *. (*At p. 413*).

And that was apparently the real *ratio decidendi* in some of the other recent cases relied on by the Circuit Court of Appeals, such as *First Reformed Dutch Church* v. *Crosswell, supra,* 210 App. Div. 294, 206, N. Y. Supp. 132, 133-134.

B. The situation here is the EXACT CONTRARY to that in the *2,086 acres of land* case.

Here, the grantor, The People of Puerto Rico, is asking enforcement, for the benefit of the citizens of the Island, of the condition upon which it had granted the license for the use of this property to the Casino, but had granted it only upon conditions emphatically designed to retain for the public in perpetuity the right to the active use of the property at all times *"as a social center and recreation park"*, to be held by the Casino, from the latter's standpoint, *"only for non-profit purposes"*.

In other words, the Casino in reality held the property *only as a trustee, under an active trust,* for the benefit of The People of Puerto Rico as *cestui que trust* for the use of the public.

C. *This is a very different situation* from that presented, for example, in those church cases where (1) the grantor had many years previously given land for a church building, reserving no active interest or use in the property whatsoever, but only stipulating for reversion in case the land ceased to be used for church purposes; and where (2) upon condemnation by the United States neither the grantor nor his heirs appeared or asked the benefit of the reversion [and the courts held that no one else could do so].

D. *The Circuit Court of Appeals apparently overlooked this distinction* when, in citing these cases, it said (Opinion, R. 49) that they "are all *squarely in point*" (*Italics supplied*).

E. Despite the rather technical reasoning about conveyancing questions of a "base or determinable fee" or of a "condition subsequent" in the opinion in the ***First Reformed Dutch Church*** case, *supra,* and in some of the others, it appears that, in the end, quite without exception, at least in the later cases, the courts have in fact endeavored to arrive at substantial justice, under varying circumstances of the different particular cases. *And the common law conveyancing system is not in force in Puerto Rico.*

F. *Manifestly, that means, in the present case,* that *the rule of the Pennsylvania court* in the *Lancaster School District* case above quoted (*ante,* pp. 22-24) *should be applied;* and that the plain intent of the Legislature of Puerto Rico should be made effective, that when what amounted to this *license* to the Casino to use the property granted to it by the Legislature, without other compensation, solely for "non-profit purposes", "as a social center and recreation park" for the people of Puerto Rico, was terminated, in whatever manner, thereupon all interests and rights of the Casino in the land were automatically at an end,—which means that the proceeds should go to the People. To give the proceeds, under such circumstances, wholly to the Casino, would mean simply to give it the benefit of an unconscionable profit, out of the People's property.

VI

It is immaterial that at the time of the enactment of the Joint Resolution in 1936 and the consummation of the transaction under it,—or at the times of the enactments of the earlier Acts of 1910 and 1912, and of the acts done under them,—the thought of the taking over of this parcel of land for the Army, by the federal government by condemnation

proceedings, may not have actually been actively in the minds of the members of the Legislature.[20]

The usual rule applies here, with relation to the construction of contracts and statutes. Impossibility of performance, the supervening of "an act of God", or other contingency not provided against in an absolute, positive, covenant in a contract or deed, or in any statutory provision, is no excuse for non-performance, no release from the provisions or conditions of the contract or deed. In the absence of proof of error or mistake, or of misunderstanding, it is to be presumed that the parties intended an absolute contractual provision to be absolute, to mean what it says.

VII

There is nothing here to indicate any mistake either of law or fact, or any misunderstanding, either on the part of the Legislature in stipulating the conditions set out in the *Provisos* in the Joint Resolution of 1936, or on the part of the Casino in accepting them.

The plain intent of the Legislature was to secure to the Puerto Rican public the use, in perpetuity, in any event, of this "social center and recreation park".

The legislation was so framed as, emphatically, to effectuate that legislative intent. The terms were accepted by the Casino, and the $36,000 was accordingly paid to it by the insular government on the express conditions, binding it to hold this parcel of land solely on a "non-profit" basis, giving it no valuable financial interest in it whatever, with all its interest automatically terminable instantly

---

[20] Although there is nothing to show that the possibility of condemnation for some purpose at some time was outside of the contemplation of the parties,—either of the Legislature or the Casino. In fact Section 9 of the Act of 1910 (Appendix, *infra*, p. 33) expressly indicates that the possibility of transfer "by judicial procedure" was in the legislative mind at that time.

upon any change in the use to which the land was put, or other breach of the conditions stated in the *Provisos.*

A.—*That legislative intent necessarily excludes the idea that any change would have been made in the terms of the "Provisos," in case the possibility of the property being taken over by the federal government for the Army, either by voluntary purchase or by condemnation proceedings, had been suggested to the legislators at that time.*

To the contrary, it is very plain that any such suggestion would have run directly counter to the idea of carrying out the legislative purpose to secure this property in perpetuity for the use of the Puerto Rican public; and hence would certainly not have caused any change in the conditions as stated in the *Provisos,*—but rather, if anything, to the exact contrary, would have caused a strengthening, if possible in any way, in the ironclad quality of the phaseology of the *Provisos.*

Second

On the *second phase* of the case the question presented is, as indicated in the petition ("Petitioner's Position" and "Questions Presented", *ante,* pp. 2-3):

Whether, under the *first Proviso* of Section 3 of the "Joint Resolution" of 1936 *ante,* p. 2; Appendix, *infra,* p. 36):

> **"Provided, That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico *shall be used only for non-profit purposes, as a social center and recreation park annexed thereto" (Italics supplied).**

the People of Puerto Rico did not, during the time while the Casino was in possession, and before these condemnation proceedings were ever begun,—and independently of any question whatever of reversion under the second and third *Provisos,*—have a then presently existing active possessory interest in the property, in the nature of an active trust for its benefit, capable of being valued like any other presently

existing undivided interest in property, and therefore compensable in these condemnation proceedings.

VIII

The primary legislative intent permanently to secure the unrestricted free use of this property for the citizens of Puerto Rico "as a social center and recreation park annexed thereto" has already been indicated (*ante*, Statement" pp. 13-15, and Points II-G, III, and VII, pp. 18-19, 27-28).

This was the primary purpose moving the Legislature to disburse the $36,000.00 out of its public Treasury by this legislation during the depression period, in 1936 ("Statement", *ante*, pp. 13-14).

IX

Wholly regardless of any question of reversion under the first phase of this case, or under the second or third *Provisos* in the legislation, this presently existing undivided active right and interest of The People of Puerto Rico in this property, was taken by the federal government by the condemnation proceedings.

A. There was nothing contingent or uncertain about that interest. It was a valuable, presently existing, right. It was capable of valuation like any other undivided interest. It was therefore compensable in these proceedings.

X

In view of that interest, the District Court should not have accepted the stipulation, signed only by the Casino with the federal government, as to the value of its interest in the property being only $125,000.00 (R. 17-19) as the adequate or sufficient basis (*Motion or Entry of Judgment*, and *Order for Delivery of Money;* R. 15-16, 20) for determining the value of the land; but should have heard evidence upon this petitioner's "Answer" (R. 21-22) as to the actual value of the land, and of all of the undivided interests in it, including the value of this interest of The People of Puerto

Rico in having this property thus maintained in perpetuity, as it then stood, under this first *Proviso* of the legislation of 1936, "as a social center and recreation park" for its citizens.

XI

It follows that Judge Magruder's "doubt", in his separate opinion (R. 50), should be considered as indicating the correct answer to the question on this second phase of this case.

This interest of The People of Puerto Rico is capable of being valued by the District Court; *and should be.*

Conclusion

The judgment of the District Court affirmed by the Circuit Court of Appeals, overruling the contentions of this petitioner, The People of Puerto Rico, on both phases of its position here, was wrong. Certiorari should issue; and, upon argument, the judgments below should be reversed, and the case be remanded to the District Court for further proceedings, with directions to determine the true and entire valuation of the land, and of the interest of this petitioner in it.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico,
Of Counsel.

APPENDIX

STATUTORY PROVISIONS

Act No. 69, approved September 3, 1910; Laws of 1910, Special Session, pp. 42-45.

AN ACT

To regulate the reconveyance by the Municipality of San Juan of certain lands conveyed to it under the provisions of a Joint Resolution entitled "Joint Resolution to Authorize the Commissioner of the Interior to sell to the Municipality of San Juan, certain lands lying east of the City of San Juan, at the place known as 'Puerta de Tierra,' belonging to The People of Porto Rico; and prescribing the conditions thereof, and for other purposes," approved March 10, 1910; to repeal the said Joint Resolution, and for other purposes.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1.—That the title to the following tract of land, which under the provisions of the Joint Resolution entitled "Joint Resolution to authorize the Commissioner of the Interior to sell to the municipality of San Juan, certain lands lying east of the city of San Juan, at the place known as Puerta de Tierra, belonging to The People of Porto Rico; and prescribing the conditions thereof, and for other purposes," approved March 10, 1910, was conveyed to the municipality of San Juan by the Commissioner of the Interior, be divested out of the said municipality and be revested in the people of Porto Rico; * * *.

Section 2.—That the Commissioner of the Interior is hereby authorized and empowered to sell and convey to the Young Men's Christian Association of San Juan, or to the Board of Trustees representing the said association, for the nominal consideration of one dollar ($1.00), a lot consisting of not less than six thousand (6,000) square meters and situated in that part of the land above described nearest the city of San Juan, on the condition that said association shall erect thereon a Young Men's Christian Association building which shall cost, when fully equipped, not less than seventy-five thousand dollars ($75,000), and maintain the same

for the purposes of said association for a period of not less than ten (10) years, or, in default thereof, the title of the said land shall revert to The People of Porto Rico.

Section 3.—That for the purpose of aiding in securing the construction and maintenance in Porto Rico of a hotel which will be capable of suitably accommodating the needs and requirements of the tourist, commercial, transient and resident patronage, the Commissioner of the Interior, with the advice and approval of the Governor of Porto Rico is hereby authorized to enter into negotiations * * *.

Section 4.—That the hotel be constructed * * *.

Section 5.—That the Governor of Porto Rico shall duly investigate such offers * * *.

Section 6.—That the Commissioner of the Interior is authorized and empowered, with the advice and approval of the Governor of Porto Rico, to make a proper deed. * * *.

Section 7.—That for the purpose of cooperating in the construction and maintenance in the city of San Juan of a casino which may fill social needs and promote general culture, the Commissioner of the Interior is hereby authorized and instructed to sell to the association "Casino de Puerto Rico," for the price of one dollar ($1.00) and by virtue of other consideration, a parcel of land belonging to The People of Puerto Rico, comprised in the official map of the office of the Commissioner of the Interior, dated November, 1909, and whose description is as follows:

"A parcel of land located on the eastern side of the city of San Juan, consisting of five thousand, six hundred and ninety-six (5,696) square meters and thirty (30) centimeters, bounded on the north and east by the lands of the Military Reservation; on the south by Road No. 1, and on the west by the street situated on the eastern side of the Plaza de Colón."

Section 8.—That the Commissioner of the Interior shall proceed to execute the proper deed transferring the ownership of the land so sold to the association "Casino de Puerto Rico"; *Provided,* That the construction of the casino building shall be carried out within a period of time which shall not exceed one year and a half from the date of the approval of this Act.

Section 9.—The terms, conditions and obligations of this Act shall apply to any purchaser or successor of such grantee, whether by voluntary act or by judicial procedure.

Section 10.—That the Joint Resolution entitled * * *, approved March 10, 1910, and all laws, or parts of laws in conflict herewith are hereby repealed.

Section 11.—That this Act shall take effect from and after its approval.

Act No. 2, approved February 21, 1912, Laws of 1912, pp. 38-39.

AN ACT

To amend an Act entitled "An Act to regulate the reconveyance by the municipality of San Juan of certain lands conveyed to it under the provisions of a 'Joint Resolution to authorize the Commissioner of the Interior to sell to the municipality of San Juan, certain lands lying to the east of the City of San Juan, at the place known as 'Puerto de Tierra,' belonging to The People of Porto Rico; and prescribing the conditions thereof, and for other purposes,' " approved September 3, 1910.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1.—That Sections 7 and 8 of an Act entitled "An Act to regulate the reconveyance by the Municipality of San Juan of certain lands conveyed to it under the provisions of a Joint Resolution entitled 'Joint Resolution to authorize the Commissioner of the Interior to sell to the Municipality of San Juan, certain lands lying to the east of the city of San Juan, at the place known as 'Puerta de Tierra,' belonging to The People of Porto Rico; and prescribing the conditions thereof, and for other purposes,' " approved September 3, 1910, be amended so as to read as follows:

"Section 7.—The Commissioner of the Interior is hereby authorized and empowered to sell and transfer, and he is hereby directed to sell and transfer, to the association or corporation 'Casino de Puerto Rico,' for the nominal price of one dollar ($1.00), and by virtue of other consideration, a parcel of land containing not less than five thousand six hundred and ninety-six square meters and thirty square centimeters (5,696.30

square meters), bounded on the north and east by lands pertaining to the Military Reservation, on the south by road No. 1 and on the west by the street that runs on the east side of the Plaza Colón, belonging to The People of Porto Rico, comprised in the official map of the Commissioner of the Interior, dated November, 1909."

"Section 8.—The Commissioner of the Interior shall proceed to execute the proper deed transferring the ownership of the land so sold to the association 'Casino de Puerto Rico': *Provided,* That the association or corporation 'Casino de Puerto Rico' shall erect thereon a building, the cost of which, fully equipped, shall not be less than sixty thousand dollars ($60,000), and that said building shall be maintained for the purposes of the association for a period of at least ten (10) years, and should this not be the case, the title of ownership of such land shall revert to The People of Porto Rico."

Section 2.—*Provided,* That the construction of the Casino building shall be carried out within a period of time which shall not exceed three years from the date of the approval of this Act.

Joint Resolution No. 27, approved April 20, 1936; Laws of 1936, pp. 1194-1198.

JOINT RESOLUTION

To authorize the Commissioner of the Interior and the Treasurer of Puerto Rico to enter into negotiations with the entities *Casino de Puerto Rico* and *Banco Territorial y Agrícola,* in liquidation, for the reimbursement of the funds of The People of Puerto Rico in the Banco Territorial y Agrícola, in liquidation, at the time of the closing of its operations, and for the acquisition of the reinforced-concrete building constructed by the first-named institution for a bowling alley, to be used for offices of the Insular Government; To appropriate the sum of thirty-six thousand (36,000) dollars, and for other purposes.

Whereas, Some time ago the Casino de Puerto Rico borrowed money from the Banco Territorial y Agrícola, for the purpose, among others, of constructing a reinforced-concrete building to be used for a bowling

alley, constituting a mortgage on its property in the sum of forty thousand (40,000) dollars);

Whereas, The Casino de Puerto Rico has paid the sum of four thousand (4,000) dollars, reducing the principal debt to thirty-six thousand (36,000) dollars, but has been unable to continue its payments because said social center has been affected by the economic crisis prevailing in the country;

Whereas, Mortgage notes secured by mortgages, among which is included the mortgage of the Casino de Puerto Rico, were given by the Banco Territorial y Agrícola to the Treasurer of Puerto Rico as collateral security, and are still in possession of the said Treasurer;

Whereas, The Banco Territorial y Agrícola, in liquidation, owes a large sum of money to the Insular Treasury for deposits, and it would be beneficial for the Insular Government to obtain the final transfer of said mortgage notes, which are secured, among other mortgages, by the mortgage on the Casino de Puerto Rico, and to acquire therewith the reinforced-concrete building constructed by the Casino de Puerto Rico for a bowling alley and the lot on which the same is erected, and thereby the mortgage which encumbers the Casino de Puerto Rico would be cancelled and the Insular Government would acquire a building which would be of great use to it;

Whereas, The consent of the Legislature of Puerto Rico is required for making this transaction;

Whereas, The carrying out of this transaction is considered beneficial for the Insular Government.

Now, Therefore, *Be it resolved by the Legislature of Puerto Rico:*

Section 1.—The Commissioner of the Interior and the Treasurer of Puerto Rico are authorized to enter into negotiations with the entities *Casino de Puerto Rico* and *Banco Territorial y Agrícola,* in liquidation, in order thereby to acquire for The People of Puerto Rico the reinforced-concrete building constructed by the Casino de Puerto Rico for a bowling alley, together with the lot on which the same is erected, to be used entirely for offices of the Insular Government. This lot is described as follows: "Quadrilateral measuring fifty-nine meters and seventeen centimeters (59.17) on

the north, where it is bounded by Luis Muñoz Rivera Avenue; fifty-six meters and eighty centimeters (56.80) on the south, where it is bounded by Juan Ponce de León Avenue; twenty meters and thirty centimeters (20.30) on the east, where it is bounded by lands of The People of Puerto Rico, and thirty-six meters and eighty centimeters (36.80) on the west, where it is bounded by the property from which the lot is segregated, that is, the property belonging to the Casino de Puerto Rico. These boundaries embrace an area of one thousand six hundred and sixty-one square meters and sixty-four square decimeters (1,661.64)."

Section 2.—To carry out the provisions of this Act, the sum of thirty-six thousand (36,000) dollars is hereby appropriated out of any available funds in the Insular Treasury, to be reimbursed, upon the acquisition of said building and lot, to the funds which The People of Puerto Rico had, and has, in the Banco Territorial y Agrícola, in liquidation.

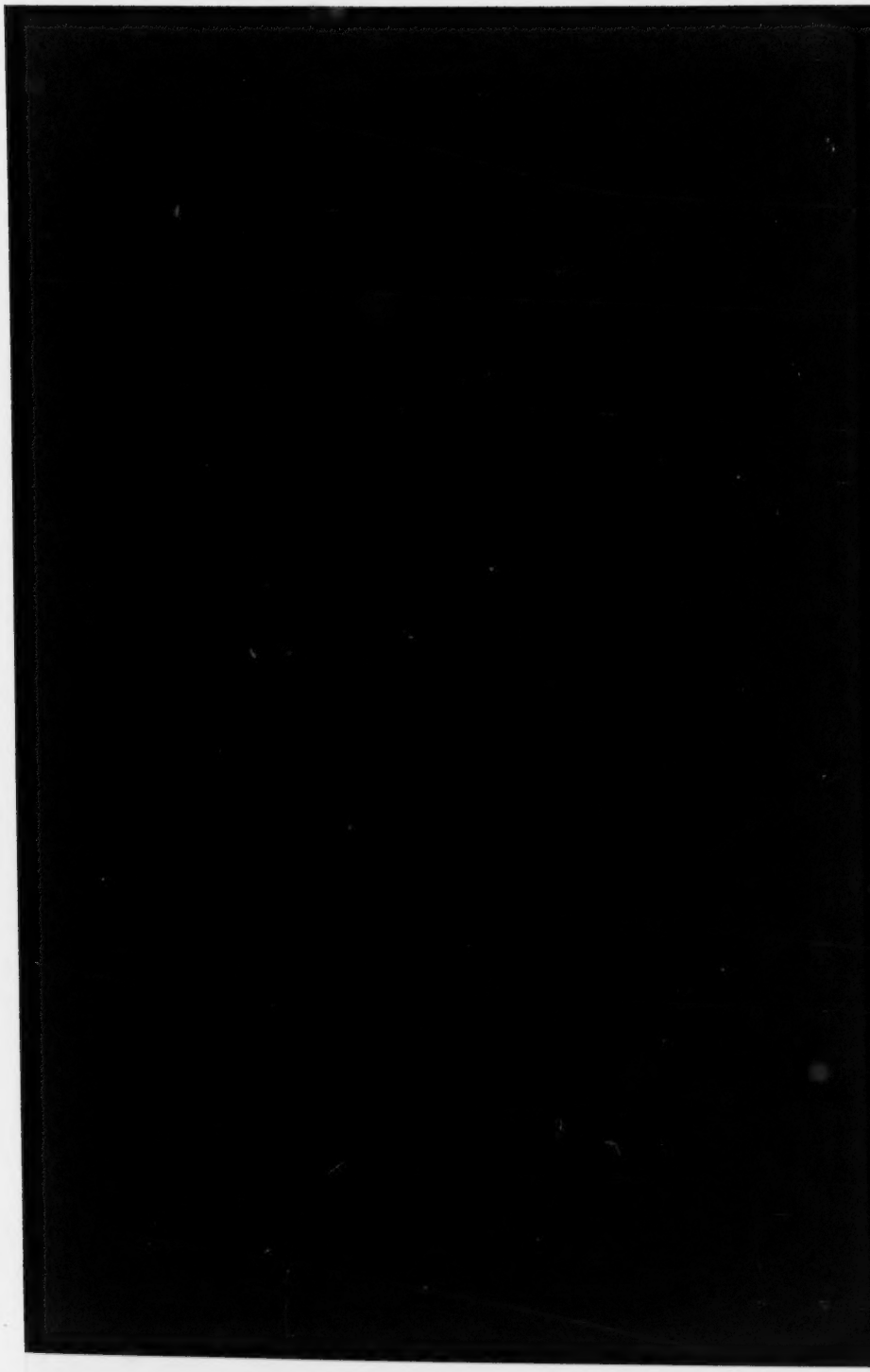
Section 3.—The Treasurer of Puerto Rico is authorized to receive from the Banco Territorial y Agrícola, in liquidation, as part payment of the debt which the latter has with The People of Puerto Rico, mortgage notes secured in part by the mortgage on the Casino de Puerto Rico, originally amounting to forty thousand (40,000) dollars, in the sum of thirty-six thousand (36,000) dollars, which notes are in the possession of the Treasurer of Puerto Rico, and to pay, with said mortgage notes, the Casino de Puerto Rico for the acquisition of the reinforced-concrete building constructed by said entity for a bowling alley, the mortgage of said Casino being totally cancelled by this transaction; and the bowling-alley building and the lot on which the same is erected shall become the property of the Insular Government; *Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for non-profit purposes, as a social center and recreation park annexed thereto; *Provided, further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other purposes different from those specified in the preceding *proviso,* such act or acts shall determine the gratuitous reversion of said lot, as well as

of all improvements and works constructed thereon, to The People of Puerto Rico; *Provided, also,* That the Commissioner of the Interior of Puerto Rico is authorized to accept the above-mentioned conditions in the corresponding deed.

Section 4.—The Commissioner of the Interior is authorized to execute and sign such deeds and instruments as may be necessary for the acquisition of the aforesaid building and lot, and to take charge of its maintenance as property of the Insular Government.

Section 5.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 6.—This Act shall take effect ninety days after its approval.



INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	6
Conclusion	14
Appendix	15

CITATIONS

Cases:	
Chandler v. *Jamaica Pond Aqueduct Corp.*, 125 Mass. 544	8
First Reformed Dutch Church v. *Croswell*, 210 App. Div. 294, 206 N. Y. S. 132	8, 9, 10
Helvering v. *Stuart*, 317 U. S. 154	13
In re Cooks' Will, 243 App. Div. 706, 277 N. Y. S. 26, affirmed per curiam 268 N. Y. 560	8, 10
Joint School District v. *Bosch*, 219 Wis. 181	7, 11
Lancaster School District v. *Lancaster County*, 295 Pa. 112	11
Lyford v. *Laconia*, 75 N. H. 220	7, 8
MacGregor v. *State Mutual Co.*, 315 U. S. 280	13
Magness v. *Kerr*, 121 Ore. 373	7
People of Puerto Rico v. *United States*, Nos. 714 and 715, this Term	6
St. Paul v. *Certain Lands in St. Paul*, 48 F. 2d 805	6
United States v. *16 Acres of Land, etc.*, 47 F. Supp. 603	7, 8, 11
United States v. *1,119.15 Acres of Land*, 44 F. Supp. 449	7, 8, 11
United States v. *1,846.77 Acres of Land, etc.*, 48 F. Supp. 721	8, 11
United States v. *2,086 Acres of Land, etc.*, 46 F. Supp. 411	7, 8, 11
United States v. *2,184.81 Acres of Land*, 45 F. Supp. 681	8
United States v. *Dunnington*, 146 U. S. 338	6
Statutes:	
Act of February 21, 1912	3, 16
Act of February 26, 1931, c. 307, 46 Stat. 1421, 40 U. S. C. 258a	3
Code of Civil Procedure of Puerto Rico (1933) sec. 89	5, 22
Laws of Puerto Rico (1910) special sess., pp. 25–28	3, 15
Laws of Puerto Rico (1936) pp. 1194–1198, J. Res. No. 27	4, 18

Miscellaneous: Page

51 A. L. R. 1473 7
29 Col. Law Review 674 11
I Nichols, Eminent Domain (2d ed.):
p. 341 12
p. 342 8
Orgel, Valuation under Eminent Domain (1936) sec. 117 8
I Restatement of Property, sec. 53 8
I Simes on Future Interests, sec. 177 7
I Tiffany on Real Property (2d ed.), sec. 132 7

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 902

PEOPLE OF PUERTO RICO, PETITIONER

v.

UNITED STATES OF AMERICA AND CASINO DE PUERTO RICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 23–26) is not officially reported. The opinions in the circuit court of appeals (R. 46–50) are reported in 132 F. 2d 220.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered December 18, 1942 (R. 50). An order denying the petition of the People of Puerto Rico for a rehearing was entered January 11, 1943 (R. 51). The petition for a writ of certiorari was filed April 9, 1943.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, when the United States acquires the fee simple title to property by condemning the base fee and the possibility of reverter, the holder of the latter has a compensable interest.

2. Whether the interest of the People of Puerto Rico in the property condemned constituted an interest of greater dignity than a possibility of reverter.

STATUTES INVOLVED

The pertinent parts of Act No. 69 of the Puerto Rican Legislature, approved September 3, 1910 (Laws of 1910, Special Session, pp. 25–28); Act No. 2 of the Puerto Rican Legislature, approved February 21, 1912 (Laws of 1912, pp. 38–39); Joint Resolution No. 27 of the Puerto Rican Legislature, approved April 20, 1936 (Laws of 1936, pp. 1194–1198); and Section 89, Code of Civil Procedure of Puerto Rico (1933), are set out in the Appendix, *infra,* pp. 15–23.

STATEMENT

On December 4, 1941, at the request of the Secretary of War, the United States filed its petition to condemn, in fee simple, a tract of land with a casino thereon, in order to provide recreational facilities for the armed forces of the United

States and for persons employed in national defense industries in San Juan, Puerto Rico (R. 1–8). At the same time the Government filed a declaration of taking pursuant to the Declaration of Taking Act, approved February 26, 1931, c. 307, 46 Stat. 1421 (40 U. S. C. 258a), and deposited $125,000.00 in court as estimated just compensation (R. 40–44). The court that day entered a judgment on the declaration of taking which recited that title to the property had vested in the United States upon the filing of the declaration and deposit of estimated just compensation (R. 10–12).

The property condemned was originally part of a larger tract which the Casino de Puerto Rico had purchased from the People of Puerto Rico on October 1, 1913, for $1.00 and "other consideration." Laws of Puerto Rico (1910), Special Session, pp. 25–28 (App. 15–16). From 1913 to 1936 the Casino held a fee simple title to the entire tract and had erected a building thereon which cost not less than $60,000.00.[1] Sometime prior to 1936 the Casino borrowed $40,000.00 from the Banco Territorial y Agricola for the purpose of constructing a reinforced concrete building to be used for a bowling alley and secured the debt by a mortgage on its property. The loan was par-

[1] The conveying Act, as amended by the Act of February 21, 1912 (App. 16–18), made erection of a building at this minimum figure a condition precedent to retention of title. There is no contention that the terms of this Act were not complied with.

tially repaid by 1936, but by reason of the economic crisis prevailing, the Casino was unable further to reduce the principal debt. The bank which owned the mortgage was, in turn, indebted to the Insular Treasury. A three-cornered transaction was entered into by which the mortgage was cancelled, the mortgage notes were turned over to the Treasurer of Puerto Rico as part payment of the bank's debt, and the bowling-alley building was purchased by the People of Puerto Rico from the Casino for the unpaid balance of the mortgage. The government of Puerto Rico thus acquired "a building which would be of great use to it," and which was to be used "entirely for offices of the Insular Government."[2] The Casino retained the rest of its property, including the main building, subject to the conditions set out in Joint Resolution No. 27, approved April 20, 1936 (Laws of Puerto Rico 1936, pp. 1194–1198) which was the legislative act approving the transaction. Those conditions read:

> * * * *Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for nonprofit purposes, as a social center and recreation park annexed thereto: *Provided further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other pur-

[2] Joint Resolution No. 27, approved April 20, 1936 (App. pp. 18–22).

> poses different from those specified in the preceding proviso, such act or acts shall determine the gratuitous reversion of said lot, as well as of all improvements and works constructed thereon, to The People of Puerto Rico: * * *

The People of Puerto Rico, named in the petition of condemnation as an entity who "may claim some interest in the land condemned," (R. 3) were served by summons on December 8, 1941, (R. 35). The People of Puerto Rico not having appeared in the proceeding within the prescribed ten day period,[3] the United States and the Casino on December 23, 1941 entered into a stipulation (R. 17) which provided, *inter alia,* that the $125,000.00 deposited in connection with the declaration of taking was just compensation for the property taken (R.18).[4] On the same day the United States filed a motion seeking the judgment of the district court that the People of Puerto Rico had no compensable interest in the property condemned (R. 15–17). The People of Puerto Rico, on January 15, 1942, filed an "answer" claiming to be entitled to the amount deposited and alleging that sum not to be just compensation for the property taken (R. 21–22). The court in a final judgment entered on January 17.

[3] Section 89, Code of Civil Procedure of Puerto Rico (1933) (App. 22).

[4] The court that day ordered payment to the Casino of the sum deposited (R. 20).

1942, held that the amount stipulated was the fair market value of the property condemned, that the events upon which the reversion of the title to the People of Puerto Rico would happen had not occurred at the time of filing this cause, and that they were not entitled to compensation for the taking (R. 26–29). The circuit court of appeals affirmed (R. 50).[5]

ARGUMENT

While the United States is usually not concerned with the question of the proper distribution or apportionment of the award in a condemnation proceeding,[6] this is more than a dispute between two claimants over an award. The People of Puerto Rico contend that they have a compensable interest in the property condemned, that they are, therefore, not bound by the stipulation between the Casino and the United States as to the value of the property, and that they would be entitled on a retrial to recover additional com-

---

[5] The court held the interest of the People of Puerto Rico to be only the right to the land in fee simple if at some indefinite time in the future the Casino should violate any one of the conditions or provisos upon which its right of present occupancy was made to depend. Judge Magruder in a separate opinion stated that he thought the interest to be something more than a possibility of reverter but agreed it could not be valued.

[6] *United States* v. *Dunnington*, 146 U. S. 338, 352–353; *St. Paul* v. *Certain Lands in St. Paul*, 48 F. 2d 805, 807 (C. C. A. 8); see memorandum of the Government in *People of Puerto Rico* v. *United States*, Nos. 714 and 715, this Term.

pensation from the United States. The Government therefore is interested.

1. Joint Resolution No. 27, approved April 20, 1936, was treated by the lower courts as subjecting the fee simple estate of the Casino in the property here involved to a condition subsequent, or as transmuting it into a determinable fee which was to continue until the Casino was dissolved, its activities ceased, or the property was used for purposes other than as a social center and recreation park. Whether the interest of the Casino be viewed as an estate on condition subsequent or an estate subject to special limitation, the rights of the People of Puerto Rico do not constitute a compensable interest in the land, being merely a possibility of reverter. *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.* 47 F. Supp. 603 (D. Mass.); *Lyford* v. *Laconia,* 75 N. H. 220; *Joint School District* v. *Bosch,* 219 Wis. 181; I Tiffany on Real Property (2d ed.), sec. 132; I Simes on Future Interests, sec. 177; see *Magness* v. *Kerr,* 121 Ore. 373; note, 51 A. L. R. 1473.

It is well settled that if the event upon which a possessory estate in fee simple defeasible is to end is an event the occurrence of which within a reasonably short period of time is not probable,

524938—43——2

then the damages for the taking thereof by an eminent domain proceeding are ascertained as though the estate were a possessory estate in fee simple absolute and the entire value thereof is awarded to the owner of the estate in fee simple defeasible. *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.,* 47 F. Supp. 603 (D. Mass.); *United States* v. *1,846.77 Acres of Land, etc.,* 48 F. Supp. 721 (W. D. Ky.); *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 206 N. Y. S. 132; *In re Cooks' Will,* 243 App. Div. 706, 277 N. Y. S. 26, affirmed per curiam 268 N. Y. 560; *Lyford* v. *Laconia,* 75 N. H. 220; *Chandler* v. *Jamaica Pond Aqueduct Corp.,* 125 Mass. 544, 547; Orgel, Valuation under Eminent Domain (1936), sec. 117; I Nichols on Eminent Domain (2d ed.), p. 342; I Restatement of Property, sec. 53. Cf. *United States* v. *2,184.81 Acres of Land,* 45 F. Supp. 681 (W. D. Ark.). There is no contention here that at the time the United States instituted condemnation proceedings there was any likelihood of the Casino being dissolved, or its activities stopping, or the property ceasing to be used for social purposes.

Petitioner, in an effort to avoid the force of these decisions, contends that the filing of the declaration of taking "*eo instanti* operated as a breach of the condition upon which the Casino

had been holding the land" (Pet. 2) and thereby worked "a reverter of the title to The People of Puerto Rico" (Pet. 3), so that "the deposited money which was substituted for the land by the condemnation proceeding * * * belong(s) to the People of Puerto Rico" (Pet. 15–16).

The United States agrees that upon the filing of the declaration of taking the interest of the Casino terminated, but by the same token the interest of the People of Puerto Rico, whatever it may have been, also terminated, and the United States, not the People of Puerto Rico, became the sole owner of the land. By a single act of appropriation the Government seized both the base fee and the interest of the People of Puerto Rico with the result that title to the property never revested in the People of Puerto Rico. As was aptly stated in the comparable case of *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 295, 206 N. Y. S. 132 (1924):

> * * * The disuser, however, was a consequence, not a cause, of a loss of title by the plaintiff. The city of New York, in condemnation proceedings, seized the estate of the plaintiff. It also seized the rights of reverter belonging to the heirs at law of the grantors. The seizure was of the entire title, wherever resident, by a single act of appropriation. There was, therefore, no interval of time between the seizure of the plaintiff's estate and the seizure of the rights of the heirs at law during which

> there could have been a reverter of title to the heirs because of a church disuser of the premises necessarily consequent upon the seizure. At the moment of appropriation there had been no disuser. At that moment the estate then being enjoyed by the plaintiff might have continued forever. At that moment the rights of the heirs were mere possibilities. These rights possessed no value capable of estimate. All that was valuable was the estate of the plaintiff. Therefore, the money paid in by the city of New York should be paid to the plaintiff as for the only thing of value taken.

Petitioner argues with some emphasis (Pet. 16–17, 19–24) that a voluntary sale by the Casino to the United States for the same purposes for which the land was taken in condemnation would have been a breach of the conditions of the provisos and worked a reverter to the People of Puerto Rico. It then contends that condemnation is but one form of transfer of title, and that the result of the taking by the United States is the same as if there had been a voluntary sale. But this is clearly erroneous, since it is well settled that a taking by eminent domain which renders impossible the continuance of a use, the voluntary cessation of which would vest the future estate, is not a happening or occurrence which would cause a reversion. *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 206 N. Y. S. 132; *In re Cooks' Will,* 243 App. Div. 706, 277 N. Y.

S. 26, affirmed per curiam 268 N. Y. 560; *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.,* 47 F. Supp. 603 (D. Mass.); *United States* v. *1,846.77 Acres of Land, etc.,* 48 F. Supp. 721 (W. D. Ky.); *Joint School District* v. *Bosch,* 219 Wis. 181. The only case apparently to the contrary is that of *Lancaster School District* v. *Lancaster County,* 295 Pa. 112, relied on by petitioner (Pet. 22–24).[7]

The Casino could not have prevented the condemnation of its property, and, at the time of taking, the estate then being enjoyed by the Casino might have continued forever. Even granting that a voluntary sale would have worked a reverter, there is no contention that the Casino contemplated selling its property to the United States, and the taking must be viewed as not having been sought by it.

Petitioner also contends (Pet. 24–26) that only the grantor or his heirs can take the benefit of the reversion upon breach of the condition. But the relevancy of this argument is not apparent. There was no breach of a condition which worked a reverter. On the contrary, when the Government took the property, it took all interests in it at the same time, including whatever interest the People of Puerto Rico might have.

---

[7] See criticism of this case in 29 Col. Law Review 674.

Petitioner contends (Pet. 26–28) that the provisos in the Joint Resolution of 1936 compel the conclusion that the Casino has no financial interest in the condemnation award. It may be conceded that in a proper case the parties could agree in the instrument creating the estate that in event of a taking by eminent domain proceedings, one having a possibility of reverter would receive the award. A similar result has been reached in case of leases. I Nichols, Eminent Domain (2d ed.) p. 341. But there is no such agreement in the instant case. Even assuming that one having a fee simple title could have created, by an instrument of sale of part of his property, a possibility of reverter in the vendee as to that part of the property not sold, no such attempt was made here.

Petitioner's contention (Pet. 18, 27) that Section 9 of the Act of September 3, 1910 (providing that the conditions of that Act should "apply to any purchaser or successor of such grantee, whether by voluntary act or by judicial procedure"), requires that in event of eminent domain proceedings the People of Puerto Rico would be entitled to the award, is not sound. All the conditions expressed in that Act, as amended by the Act of February 21, 1912, were fulfilled by 1922, and Section 9 is therefore no longer in force.

Furthermore, these legislative provisions have been construed by the two lower courts against the petitioner, and, in the absence of a decision by a Puerto Rican court to the contrary, this Court

has indicated it will leave undisturbed such an interpretation of purely local law. *MacGregor* v. *State Mutual Co.*, 315 U. S. 280, 281. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 163.

2. Petitioner's second point that under the first proviso of the Joint Resolution of 1936 (App. 21) it had a presently existing active possessory interest in the land (Pet. 28–30), is admittedly not raised in its "answer" (R. 21–22) and was not briefed in the circuit court of appeals (App. 22–23), although it was raised on the oral argument there. It may be conceded that the People of Puerto Rico had an interest in the activities of the Casino, but it did not have a compensable property interest in the subject matter of the condemnation suit. As the circuit court of appeals pointed out (R. 48–49):

> The fact that the Casino had only the right to use the property for non-profit purposes does not affect the existence of its interest but only the value thereof * * *.

The same situation exists in the case of school boards, churches, and the like which hold a determinable fee in property as long as it is used for specified purposes. As has been pointed out (pp. 7–8), the overwhelming weight of authority gives the award in such instances to the owner of the determinable fee. The interest that the People of Puerto Rico had in the continued use of the Casino as a social center cannot be looked to as a property interest, which, if compensable,

would entitle it to share in the award. Nowhere in the petition or in petitioner's supporting brief is there any suggestion of how this "valuable, presently existing right" could be valued. Obviously, it would have no market value. As stated by the district court (R. 25), since "just compensation contemplates that the property owner be put in the same financial condition as before the taking, it would be clear that The People of Puerto Rico would receive exactly nothing."

Since the People of Puerto Rico had no compensable interest in the property condemned, they cannot be heard to question the approval of the stipulation by the trial court as to the fair market value of the property, and they have no right to share in the award.

CONCLUSION

The decision of the circuit court of appeals is correct, raises no new question of substance, and presents no conflict. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
VERNON L. WILKINSON,
DWIGHT D. DOTY,
Attorneys.

MAY 1943.

APPENDIX

ACT No. 69, APPROVED SEPTEMBER 3, 1910; LAWS OF PUERTO RICO (1910), SPECIAL SESSION, pp. 25–28.

SECTION 1.—That the title to the following tract of land, which under the provisions of the Joint Resolution entitled "Joint Resolution to authorize the Commissioner of the Interior to sell to the municipality of San Juan, certain lands lying to the east of the city of San Juan, at the place known as Puerta de Tierra, belonging to The People of Porto Rico, and prescribing the conditions thereof, and for other purposes," approved March 10, 1910, was conveyed to the municipality of San Juan by the Commissioner of the Interior, be divested out of the said municipality and be revested in the People of Porto Rico, * * *.

* * * * *

SECTION 7.—That for the purpose of cooperating in the construction and maintenance in the city of San Juan of a casino which may fill the social needs and promote general culture, the Commissioner of the Interior is hereby authorized and instructed to sell to the association Casino de Puerto Rico, for the price of one dollar ($1.00) and by virtue of other considerations, a parcel of land belonging to The People of Porto Rico, comprised in the official map of the office of the Commissioner of the Interior, dated November, 1909, and whose description is as follows:

A parcel of land located on the eastern side of the city of San Juan, consisting of five thousand six hundred and ninety-six (5,696) square meters and thirty (30) centimeters, bounded on the north and east by lands of the Military Reservation; on the south by Road No. 1, and on the west by the street situated on the eastern side of the Plaza de Colon.

SECTION 8.—That the Commissioner of the Interior shall proceed to execute the proper deed transferring the ownership of the land so sold to the association Casino de Puerto Rico; *Provided,* That the construction of the casino building shall be carried out within a period of time which shall not exceed one year and a half from the date of the approval of this Act.

SECTION 9.—The terms, conditions and obligations of this Act shall apply to any purchaser or successor of such grantee, whether by voluntary act or by judicial procedure.

SECTION 10.—That the Joint Resolution entitled * * *, approved March 10, 1910, and all laws, or parts of laws, in conflict herewith are hereby repealed.

SECTION 11.—That this Act shall take effect from and after its approval.

ACT No. 2, APPROVED FEBRUARY 21, 1912, LAWS OF PUERTO RICO (1912), pp. 38–39.

SECTION 1.—That Sections 7 and 8 of an Act entitled "An Act to regulate the reconveyance by the Municipality of San Juan of certain lands conveyed to it under the provisions of a Joint Resolution entitled 'Joint Resolution to authorize

the Commissioner of the Interior to sell to the Municipality of San Juan, certain lands lying to the east of the city of San Juan, at the place known as 'Puerta de Tierra,' belonging to The People of Porto Rico; and prescribing the conditions thereof, and for other purposes,' " approved September 3, 1910, be amended so as to read as follows:

SECTION 7.—The Commissioner of the Interior is hereby authorized and empowered to sell and transfer, and he is hereby directed to sell and transfer, to the association or corporation "Casino de Puerto Rico," for the nominal price of one dollar ($1.00), and by virtue of other considerations, a parcel of land containing not less than five thousand six hundred and ninety-six square meters and thirty square centimeters (5,696.30 square meters), bounded on the north and east by lands pertaining to the Military Reservation, on the south by road No. 1 and on the west by the street that runs on the east side of the Plaza Colon, belonging to The People of Porto Rico, comprised in the official map of the office of the Commissioner of the Interior, dated November, 1909.

SECTION 8.—The Commissioner of the Interior shall proceed to execute the proper deed transferring the ownership of the land so sold to the association Casino de Puerto Rico": *Provided,* That the association or corporation "Casino de Puerto Rico" shall erect thereon a building, the cost of which, fully equipped, shall not be less than sixty thousand dollars ($60,000), and that said building shall be maintained for the purposes of the association for a period of at

least ten (10) years, and should this not be the case, the title of ownership of such land shall revert to The People of Porto Rico.

SECTION 2.—Provided that the construction of the Casino building shall be carried out within a period of time which shall not exceed three years from the date of the approval of this Act.

* * * * *

JOINT RESOLUTION No. 27, APPROVED APRIL 20, 1936; LAWS OF PUERTO RICO (1936), pp. 1194–1198.

JOINT RESOLUTION

To authorize the Commissioner of the Interior and the Treasurer of Puerto Rico to enter into negotiations with the entities *Casino de Puerto Rico* and *Banco Territorial y Agricola,* in liquidation, for the reimbursement of the funds of The People of Puerto Rico in the Banco Territorial y Agricola, in liquidation. At the time of the closing of its operations, and for the acquisition of the reinforced-concrete building constructed by the first-named institution for a bowling alley, to be used for offices of the Insular Government; to appropriate the sum of thirty-six thousand ($36,000) dollars, and for other purposes.

Whereas, Some time ago the Casino de Puerto Rico borrowed money from the Banco Territorial y Agricola, for the purpose, among others, of constructing a reinforced-concrete building to be used for a bowling alley, constituting a mortgage on its property in the sum of forty thousand (40,000) dollars;

Whereas, The Casino de Puerto Rico has paid the sum of four thousand (4,000) dollars, reducing the principal debt to thirty-six thousand (36,000) dollars, but has been unable to continue its payments because said social center has been affected by the economic crisis prevailing in the country;

Whereas, Mortgage notes secured by mortgages, among which is included the mortgage of the Casino de Puerto Rico, were given by the Banco Territorial y Agricola to the Treasurer of Puerto Rico as collateral security, and are still in the possession of the said Treasurer;

Whereas, The Banco Territorial y Agricola, in liquidation, owes a large sum of money to the Insular Treasury for deposits, and it would be beneficial for the Insular Government to obtain the final transfer of said mortgage notes, which are secured, among other mortgages, by the mortgage on the Casino de Puerto Rico, and to acquire therewith the reinforced-concrete building constructed by the Casino de Puerto Rico for a bowling alley and the lot on which the same is erected, and thereby the mortgage which encumbers the Casino de Puerto Rico would be cancelled and the Insular Government would acquire a building which would be of great use to it;

Whereas, The consent of the Legislature of Puerto Rico is required for making this transaction;

Whereas, The carrying out of this transaction is considered beneficial for the Insular Government,

Now, Therefore, *Be it resolved by the Legislature of Puerto Rico:*

SECTION 1.—The Commissioner of the Interior and the Treasurer of Puerto Rico are authorized to enter into negotiations with the entities *Casino de Puerto Rico* and *Banco Territorial y Agricola,* in liquidation, in order thereby to acquire for The People of Puerto Rico the reinforced-concrete building constructed by the Casino de Puerto Rico for a bowling alley, together with the lot on which the same is erected, to be used entirely for offices of the Insular Government. This lot is described as follows: "Quadrilateral measuring fifty-nine meters and seventeen centimeters (59.17) on the north, where it is bounded by Luis Munoz Rivera Avenue; fifty-six meters and eighty centimeters (56.80) on the south, where it is bounded by Juan Ponce de Leon Avenue; twenty meters and thirty centimeters (20.30) on the east, where it is bounded by lands of The People of Puerto Rico, and thirty-six meters and eighty centimeters (36.80) on the west, where it is bounded by the property from which the lot is segregated, that is, the property belonging to the Casino de Puerto Rico. These boundaries embrace an area of one thousand six hundred and sixty-one square meters and sixty-four square decimeters (1,661.64).

SECTION 2.—To carry out the provisions of this Act, the sum of thirty-six thousand (36,000) dollars is hereby appropriated out of any available funds in the Insular Treasury, to be reimbursed, upon the acquisition of said building and lot, to the funds which The People of Puerto Rico had, and has, in the Banco Territorial y Agricola, in liquidation.

SECTION 3.—The Treasurer of Puerto Rico is authorized to receive from the Banco Territorial y Agricola, in liquidation, as part payment of the debt which the latter has with The People of Puerto Rico, mortgage notes secured in part by the mortgage on the Casino de Puerto Rico, originally amounting to forty thousand (40,000) dollars, in the sum of thirty-six thousand (36,000) dollars, which notes are in the possession of the Treasurer of Puerto Rico, and to pay, with said mortgage notes, the Casino de Puerto Rico for the acquisition of the reinforced-concrete building constructed by said entity for a bowling alley, the mortgage of said Casino being totally cancelled by this transaction; and the bowling-alley building and the lot on which the same is erected shall become the property of the Insular Government; *Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for non-profit purposes, as a social center and recreation park annexed thereto; *Provided, further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other purposes different from those specified in the preceding proviso, such act or acts shall determine the gratuitous reversion of said lot, as well as of all improvements and works constructed thereon, to The People of Puerto Rico; *Provided, also,* That the Commissioner of the Interior of Puerto Rico is authorized to accept the above-mentioned conditions in the corresponding deed.

SECTION 4.—The Commissioner of the Interior is authorized to execute and sign such deeds and instruments as may be necessary for the acquisi-

tion of the aforesaid building and lot, and to take charge of its maintenance as property of the Insular Government.

SECTION 5.—All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 6.—This Act shall take effect ninety days after its approval.

SEC. 89, CODE OF CIVIL PROCEDURE OF PUERTO RICO (1933)

SECTION 89. The summons must be directed to the defendant, signed by the secretary, and issued under the seal of the court and must contain:

* * * * *

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the district in which the action is brought; * * *

* * * * *

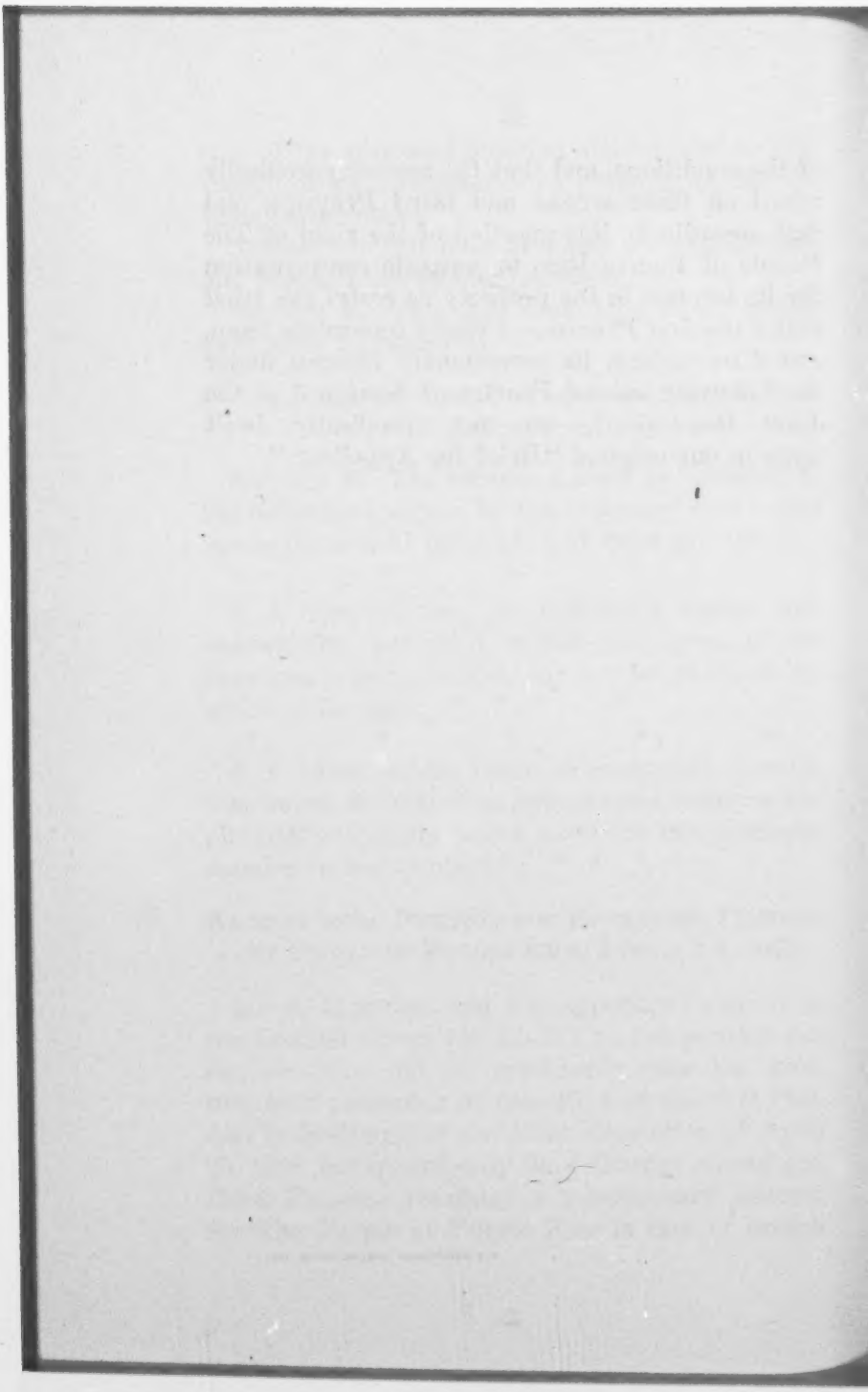
5. In other actions [than on contracts], a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint. * * *

EXCERPT FROM PETITION FOR REHEARING FILED BY THE PEOPLE OF PUERTO RICO, JANUARY 4, 1943

4.—A. It is true that this appellant's answer in the District Court (R. 21–22) to the petition for condemnation did not specifically raise the question here presented of the effect of the *first Proviso* in Section 3 of the Joint Resolution of April 20, 1936, but quoted only the following *second* and *third Provisos* retaining a reversionary interest for The People of Puerto Rico in case of breach

of the conditions, and that the answer specifically relied on those *second* and *third Provisos,* and that accordingly this question of the right of The People of Puerto Rico to separate compensation for its interest in the property as *cestui que trust* under the *first Proviso,*—(wholly separately from, and disregarding, its reversionary interest under the following *second Proviso* of Section 3 of the Joint Resolution),—was not specifically dwelt upon in our original "Brief for Appellant."

U. S. GOVERNMENT PRINTING OFFICE: 1943



22

Office - Supreme Court, U. S.
FILED
MAY 13 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1942

No. 902

PEOPLE OF PUERTO RICO,

Petitioner,

vs.

UNITED STATES OF AMERICA

and

CASINO DE PUERTO RICO,

Respondents.

REPLY BRIEF FOR PETITIONER, In Reply To Brief In Opposition

First

The People of Puerto Rico had much more than "merely a possibility of reverter".

The distinction appears very plain between the ordinary "church case," such as, for example, *First Reformed Dutch Church* vs. *Crosswell*, 210 App. Div. (N. Y.) 294, 206 N. Y. Supp. 132, upon which reliance is placed in the federal government's brief (*Brief for Respondent*, pp. 7, 8, 9-10), and other cases of that category, where a grantor gives land for a church, reserving no interest or use in it for himself or his heirs, whatsoever, but only a bare "possibility of reverter" if and whenever it may cease to be used for church purposes,[1]—that is to say, where whatever theoreti-

[1] And, as in most of those cases, neither the grantor nor his heirs evinced any interest in the property when, years afterwards, the land was taken in condemnation, and did not trouble themselves to make any demand for re-entry on the land or for return of the proceeds to them.

cal interest may remain in the grantor may be said to be, at most, in the nature only of a "dry trust" giving him no possible active use of the property but only the bare "possibility of reverter" upon breach of the conditions under which the land was granted;—and, on the other hand, the instant case where The People of Puerto Rico reserved for their citizens *a presently existing active, constant use* of the property "as a social center and recreation park".

That is an active present use of the property in the nature of a presently existing undivided interest in it, wholly distinct from the interest of the Casino,—[and wholly distinct also, from the "possibility of reverter" under the second and third *Provisos* of the Act of 1936, which constituted another, separate interest (contingent interest) of The People of Puerto Rico].

Second

This presently existing active undivided interest was capable of valuation, and was therefore "compensable", like any other undivided interest in property.

A. No reason is seen why it could not be valued; and none has been suggested, either by the Circuit Court of Appeals or the District Court, or by the respondent.

B. Respondent's brief in opposition simply says (*Brief*, p. 14):

> "Obviously, it would have no market value."

And JUDGE MAGRUDER in his separate opinion, expressing his "doubt", says (R. 50):

> "I would not know how such an interest should be valued; certainly it must be something less than the value of an unencumbered fee".[2]

---

[2] The majority opinion of the Circuit Court simply ignores this interest (R. 49), as is noted in our Petition for Certiorari (Petition, p. 5, 6: footnote 3, p. 5).

C. *But why can it not be valued like any other existing undivided interest in real estate?* Why is it not simply a question of expert opinion evidence of real estate men or appraisers familiar with the property and the surroundings, and with the uses to which it was being put, respectively, by the Casino [under what really amounted to a *license* to them to use the property solely for "non-profit" purposes under the Act of 1936], on the one hand, and the uses to which the citizens were putting it "as a social center and recreation park" under the right reserved for their benefit by The People of Puerto Rico, on the other hand?

D. The property as a whole was surely capable of valuation. The Casino has stipulated that its own interest in it was worth only $125,000 (*Stipulation,* R. 18). The conclusion may well follow that the evidence which the court may receive may indicate that the cash value of The People's interest, for the benefit of its citizens, in the rights reserved for their use, was the difference between the Casino's estimate of $125,000, for its own interest in the property, and the total valuation of the property for all purposes, whatever the total valuation may be shown to be.

E. At any rate, the value of The People's interest in this active use for the benefit of their citizens, should be capable of valuation. This seems to us to be plain.

Third

Reverter. Conflict of Decisions

A. Respondent's Brief in Opposition says (*"Conclusion,"* p. 14) that the decision of the Circuit Court of Appeals "presents no conflict".

B. This simply ignores (a) the plain conflict in the authorities pointed out in the decision of the Circuit Court of Appeals itself (R. 49-50) between the cases upon which it relies and the decision of the Pennsylvania Supreme

Court upon which we rely, and which the Circuit Court expressly refuses to follow.[3]

Fourth

Summing Up

A. The plain commonsense practical view, best serving the ends of justice between the parties, is that of the Pennsylvania Supreme Court in the *Lancaster School District case.*

Wholly aside from any question of reverter, The People of Puerto Rico's actively presently existing interest in the property for the benefit of their citizens as a "social center and recreation park" was capable of valuation like any other undivided interest in real estate. Therefore, when it is taken in condemnation, "just compensation" should be made to The People of Puerto Rico for its loss.

C. As was pointed out in the *2,086 acres case,*[4] the rule denying reverter is ordinarily considered applicable,—and justly so,—primarily only in those cases where, as in so many of the "church cases", neither the original grantor

---

[3] *Lancaster School District* v. *Lancaster,* 295 Pa. 112, 144 Atl. 901, 902-903, 903-904. (Quoted, pp. 22-24, of our Brief in Support of Petition for Certiorari).

[The Circuit Court of Appeals, in citing the *Lancaster School District case* refers (R. 50) to a note concerning it appearing in 29 Columbia Law Review 674, commenting that it appears to be in conflict with decisions in other jurisdictions. On the other side of the picture notation should be made of the comment made in 25 Columbia Law Review 101, on decisions on the other side (some of those upon which the Circuit Court of Appeals relies here), indicating the editor's queries concerning them].

[4] *United States* v. *2,086 Acres of Land,* 46 Fed. Supp. 411, quoted on pages 24-25 of our Brief in Support of Petition for Certiorari.

nor his heirs is insisting on it or demanding reversion of the property. Those situations are wholly different from the present case where The People of Puerto Rico—instead of having at the most a perfectly "dry" or barren theoretical interest in the reversion of the property, and nothing else, and then not even insisting on that, when condemnation proceedings are begun—here, to the exact contrary: (a) Had an active use, constituting a present possessory interest in the property for the benefit of its citizens; and (b) Has promptly claimed the reverter when the condemnation proceedings deprived it of that use which by the Act of 1936 the Legislature had carefully sought to preserve in perpetuity for its citizens.

Conclusion

Under such circumstances, the fortuitous event of condemnation by the federal government ought not to work a complete deprivation of the People of Puerto Rico of their property. Either (a) the value of the property should be ascertained and paid to The People of Puerto Rico in substitution of the land taken which reverted to The People under the second and third *Provisos* of the Act of 1936, or else (b) in any event the presently existing active interest of the citizens in the property as a "social center and recreation park" which has been taken from them should be valued as a part of the valuation of the entire property, and the value of that interest as it may be found by the District Court, should be paid to The People of Puerto Rico for their benefit [and to enable the insular government, so far as the money may extend, to provide similar facilities for its citizens].

It is respectfully submitted that the prayer of the petition should be granted; the writ of certiorari issued; and, upon argument, the judgment below be reversed and the case

remanded to the District Court for further proceedings in accordance with the prayer of the petition and the supporting brief.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico,
Of Counsel.